



City of
Burlington, Vermont
149 Church Street

CODE ENFORCEMENT REPORT

ZP #: 17-1103AP

Tax ID: 050-1-108-000

Application Date: May 12, 2017

Property Address: 383 COLLEGE STREET

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.

Description of Violation # 334211: Conversion of a multi-use, 5-office and 12-residential unit structure, to a 14-residential unit building with commercial use, without zoning approval. Also, unpermitted exterior signs and site plan alterations.

Sec. 12.2.2 Appeals of Administrative Officer Decisions

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

Name and address of appellant:

Drew and Dianne Chase d/b/a Astra Burlington, LLC
2217 Orchard Road
Charlotte, VT 05477

Represented by: Marc Wiener, Esq.

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

383 College Street is a mixed residential/office space with 14 residential living units and 5 offices.

Reference to the regulatory provisions applicable to that appeal

The statute applicant relies upon is 24 VSA 4454 (a) establishing a 15-year statute of limitations for the various site improvements or lack of compliance with the zoning permits as set forth in the Notice of Violation as follows:

- (a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

Relief requested by the appellant

Applicant is requesting a determination that its property is not in violation of the 1975 zoning permit for (1) failure to construct site improvements which were not constructed in 1975, or which were removed or not maintained from 1975 until the date he purchased this property in 1985.

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

Applicant (as individuals and presently as an LLC comprising Drew and Dianne Chace as members) has owned this property for 32 years. There was no carport when he purchased the property, no landscaping shielding the parking area, no handicap ramp, and the parking lot has retained its original dimensions from 1985 and has not been expanded or reduced in size.

Appellant's Submittals

No submittals attached to the appeal from Appellant

City's Rebuttal:

Appellant does not deny that changes occurred at the property. The changes that occurred at the property required zoning permits. Appellant did not get the required permits and therefore, the property is in violation. Appellant does not refute this. The violation exists.

Instead, as a defense, Appellant relies on 24 VSA § 4454 (a) which establishes a 15-year statute of limitations for zoning enforcement in certain situations. 24 VSA § 4454 does not make a zoning violation legal, rather, it just prevents enforcement. For violations that fall within 24 V.S.A. §4454(a), they are unenforceable violations.

There is support in case law for a few exceptions to the statute of limitations of 24 V.S.A. §4454(a) including, but not limited to 24 V.S.A. §4470(b) which pertains to decisions of the Board and Use violations. *A municipality shall enforce all decisions of its appropriate municipal panels ...*

The concept for the exception of a "use" violation being exempt is that 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.

Appellant requested that the Zoning Administrator recognize the existence of 14 residential units under the 15-year Statute of Limitations on March 25, 2015 and that request was denied, appealed to the DRB and the DRB upheld the Zoning Administrator's decision. That

decision was appealed to the Environmental Division, but ultimately withdrawn by the Appellant. Therefore, Finality as outlined under *Sec. 12.2.5 Finality of the CDO* attaches to the Board's 2015 decision in this matter.

City's Submittals

- Notice of Violation Dated April 18, 2017
- Photos of Property
- Site Plan Approved in 1975
- FOF ZP 15-0849DT
- Copy of 24 V.S.A. § 4454(a) and
- Copy of 24 V.S.A. §4470 (b)

Background Information:

- RH Zone
- Multifamily Structure w/offices
- Neighborhood Parking District
- Built 1964
- ZP 04-173 Cover existing T1-11 vertical siding with R3 foam board and three quarter inch fiber cement siding, 4-inch reveal, 6-inch corner boards, trim detail on windows as per submitted photos. Quarter inch insulation. Three quarter inch x 6inch PVC board transition from brick to clapboard as noted in west side elevation. Trim out windows and door with PVC board. 4800 sq. ft. of coverage. Construction to occur between the hours of 8am-5pm, M-F. To date, Appellant has failed to obtain a Certificate of Occupancy for this permit.
- ZP 15-0849DT: Determination of the existence of fourteen residential rental units. Administrative Adverse Decision appealed to the DRB on May 5, 2015 and they upheld Administrative Adverse Decision June 1 2015). Appellant appealed DRB Decision to the VT Environmental Court but later withdrew the appeal.
- April 18, 2017 Notice of Violation Issued for the conversion of a multi-use five-office and 12-residential structure to a 14-residential unit building without zoning approval (ie. removing five offices and replacing with two additional residential units for a total of 14 residential units).

INVESTIGATION:

Planning/Zoning Records:

- November 17, 1959, permit to build a new fraternity house on the lot west of 389 College St.; approved November 24.
- February 24, 1975 request to convert the former Tau Epsilon Phi building at 383 College Street to twelve apartments on the second and third floors and five offices on the first floor.

Also to erect a sign flat against the building. Replace a front window with a door. Approved March 11, 1975 with 5 conditions; permit was not appealed. Site plan attached to permit.

- March 14, 1978 request to convert the 12 apartments and five offices building at 383 College Street, into 16 apartments and the removal of the five offices. Remove rear exterior doors and fill in the spaces was approved. To date one office remains and rear exterior door remains. The permit was not enacted.
- March 25, 2015 request that Zoning Administrator recognize the existence of 14-residential units under the 15-year Statute of Limitations; request denied. ZP 15-0849 DT decision was appealed but then withdrawn.

Department Public Works Records:

- January 2, 1990, building permit to “fit-up” bath and kitchen for office use only.
- January 24, 1990, electrical permit for a new bath on the first floor.
- June 10, 2002, building permit for interior repair and remodeling.
- March 13, 2003, electrical permit to install new wiring for newly installed AC/DC interconnected smoke detectors per City Ordinance for 14 units.

Code Enforcement Minimum Housing Records:

- 2003 – 2017 Owner registered 14 rental units.

Assessor Records:

- Current Assessor Records identify the Property as Office/Residential with 15 units.
- 1993 Records indicate there are 18 rental units and 2 general office units.
- 1985 Records indicate 18 rental units. Work sheet indicates there is an 18% commercial value but does not break out numbers.

Overview:

- 1959 Zoning approval to build a new fraternity house
- 1975 Zoning approval to convert fraternity to 12 apartments on the second and third floors and five offices on the first floor; permit accompanied by an approved site plan.
- 1978 Zoning request to convert 12 apartments and 5 offices to 16 apartments and removal of the five offices. Permit was not enacted and expired.
- 1990 Building permits to “fit-up” bath and kitchen for office use only. Electrical permit to wire new bath on the first floor.

- 2002 Building permit for interior repair and remodeling
- 2003 Electrical permit for new wiring for newly installed AC/DC interconnected smoke detectors for 14 units
- 2003-2017 Housing registration for 14 residential units.
- 2015 Zoning request that Zoning Administrator recognize the existence of 14 units under the 15-year Statute of Limitations. Determination appealed and DRB upheld the administrative decision.
- 2017 Code Enforcement Officer verified 2 residential units on the first floor, site did not correspond to the 1975 approved site plan and conditions of approval, and unapproved signs were posted at the Property.

FINDINGS

- Structure was originally built for a fraternity use in 1959. Sixteen years later the fraternity was converted to 12 residential units on the second and third floors and five offices on the first floor. Owners' attorney suspects the existing two units on the first floor were from the house manager units for the fraternity, but the 1975 permit is clear that the first floor is for five office spaces; if two house manager units did exist during the fraternity years, they should have been removed at this time.
- In the 90's trade permits were issued for a new kitchen and bath but there are not corresponding zoning permits in the City's Planning/Zoning files.
- Site visit to Property on April 11, 2017, found one commercial use based on signage and conversation with business owner; no evidence as to the number of residential units, although business owner said there are approximately 14 residential units; 15 parking spaces on site (including behind the building) and an indication someone has been accessing, or parking on, the green space in close proximity to the sidewalk on College Street; follow-up site visit on May 10, 2017, with Owner's legal representation present, inspector verified 5 business offices and 2 residential units on the first floor. Appellant's representation stated there were 12 residential units on floors 2 and 3, which corresponds with Minimum Housing records.
- May 10, 2017 follow-up visit to the Property, with Owner's legal representation, findings included 2 residential units on the first floor and 5 offices. All parties reviewed the 1975 zoning permit, conditions of approval, and 1975 approved site plan; discrepancies between uses and site issues were identified along with unapproved signs.
- There are no zoning permits on file to increase the number of residential units, to reduce the number of commercial spaces, for additional signage, or site plan review (ie. amend 1975 Approved Site Plan).

- April 18, 2017 Notice of Violation mailed to Appellant certified and first class mail.

Conclusion:

The City asks the Board to uphold ZV #334211 and, as allowed for in Section 2.7.10 of the CDO, institute the following remedies:

1. By July 28, 2017, Appellant shall present to the Zoning Administrative Officer a plan to remove the two illegal units and how the space will be integrated into the approved/existing 5-office units.
2. By July 31, 2017 Appellant shall obtain all appropriate permits to remove the two illegal dwelling units and to reconfigure the first floor space.
3. By July 31, 2017 Appellant site shall comply with 1975 approved site plan or Appellant shall submit a complete zoning application for Site Plan Improvements.
4. By August 1, 2017 work shall start to remove the two illegal first floor dwelling units with a completion date of August 4, 2017.
5. If Appellant chooses, prior to July 31, 2017, they may request an Agreement between the City and Appellants with a reasonable timeframe in which to bring the property into compliance with the CDO; fees will be required. Agreement shall be executed on or before 4:00 pm on August 21, 2017.
6. If City denies Appellant's request for an Agreement, Appellant shall revert back to remedy items 1-4
7. It is the Appellant's responsibility to contact the Code Enforcement Office and request an inspection to verify Property has remedied ZV #334211.