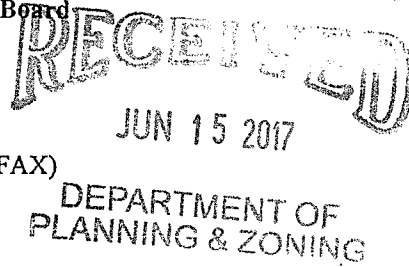
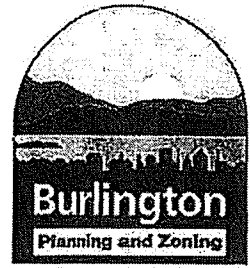


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Austin Hart, Chair
Missa Aloisi
Alexander J. LaRosa
Michael Long
Brad Rabinowitz
Israel Smith
Jonathan Stevens

Alexandra Zipparo, (alternate)
Jim Drummond, (alternate)



Burlington Development Review Board
Findings of Fact
Deliberative Hearing Monday, May 18, 2015

Board Members Present: Michael Long, Brad Rabinowitz, Alexander LaRosa, Missa Aloisi, Israel Smith, Ali Zipparo.

Staff members present: Ken Lerner, Mary O'Neil.

File: 15-0849DT Appeal

Location: 383 College Street

Zone: RH **Ward:** 8E

Date appeal accepted: April 8, 2015

Date of administrative decision: March 26, 2015

Date of application: March 5, 2015

Appellant/Owner: Marc Wiener/Dianne & Drew Chase, DBA Astra Burlington LLC

Request: Appeal of Administrative Determination regarding the existence of fourteen residential units at 383 College Street.

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. Minutes

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

II. Motion by Brad Rabinowitz: In the matter of 15-0849DT, I move we **deny** the appeal of the adverse determination regarding the existence of fourteen residential units and adopt the following findings:

III. Findings

Background:

- Zoning Permit to build frat house. Approved November 24, 1959.
- Zoning Permit/COA7510 to convert frat house to twelve apartments and five offices. Approved February 24, 1975/March 17, 1975.
- Zoning Permit to convert the 12 apartments and five offices into 16 apartments and the removal of the five offices. Approved March 14, 1978. This permit was conditioned to obtain approval of the Planning Commission for design review.

- Zoning Determination 15-0849DT; to recognize the existence of fourteen residential rental units. Adverse March 26, 2015. (Subject of appeal).

Overview: The determination request was adverse “Based on the zoning permit issued on February 24, 1975 for 12 apartments and the lack of any additional zoning permits for additional units, under current status of law it is not possible to confirm fourteen residential units on the subject property.”

- Subsequent to the appeal of the determination another permit was found that approved, on March 14, 1975, the conversion of the 12 units into 16 units, but also eliminated the offices. This permit was conditioned upon approval of the Planning Commission for design review. However, after a further search no evidence of the Planning Commission approval was found. This included review of all Commission agendas from February 1978 to December 1979. Unless the appellant can provide evidence of the Planning Commission approval it appears that this permit never was completed or implemented. This is further evidenced by the appellant’s affidavit that states there are five office spaces, which confirms that they were not removed under the March 14, 1975 permit.
- Part 2 of this application is for a new structure, attached to Alumni House via a connector that will provide gallery space. The plan includes reconfigured driveways and pedestrian walkways, lighting and landscaping. The new “Silver Pavilion” building is intended to be an approximately 6,035 sq. feet event space for up to 150 people.
- Plans include alteration and associated site changes to 411 Main Street which will require either separate zoning application and review, or merger of the lots to create a single lot. The University has chosen the latter.

Appellant Statement/Response:

File statement dated April 7, 2015

Appellant claims they have owned the property since 1985 and that it contained 14 units at that time and ever since. The appeal applies the 15-year statute of limitations pursuant to 24 VSA 4454 to support the claim for 14 units.

In addition to the appellant’s affidavit all other documentation provided by the appellant for the existence of 14 units are city records from Code Enforcement, Minimum Housing. However, these records only go back to 2002, and are based on owners’ representation and not on any research of zoning permit files to insure all appropriate Zoning Permits and Zoning Certificates of Occupancy have been issued for the above property. This is clearly stated in the zoning compliance letter issued for this property by Code in 2003.

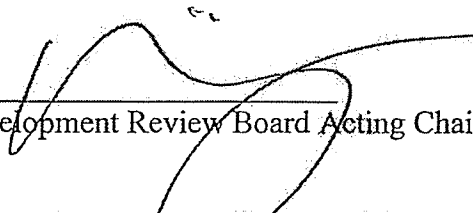
Further, the change of use to 14 units is an exception to the 15-year limitation, based on case law; see *St. Albans v. Hayford*, Docket No. 161-9-03 Vtec., (Vt. Environmental Ct., June 1, 2004)(Wright, J.); *City of Burlington v. Richardson*, 2006 WL 4088224 at 5 (Vt. Env’tl. Ct. June 27, 2006); *City of Burlington v. Wesco, Inc.*, 2008 WL 7242596 at 7 (Vt. Env’tl. Ct. March 6, 2008). Thus, the 15-year position put forth by the appellant is not applicable in the use of the premises in violation that is not in compliance with the 12-unit approved permit and COA.

Second: Michael Long

Vote: 4-2 (M. Aloisi & Ali Zipparo opposed) motion carried

Dated at Burlington, Vermont, this 1 day of ^{June} May, 2015

Respectfully Submitted,



Brad Rabinowitz, Development Review Board Acting Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court, Environmental Division. (Comprehensive Development Ordinance Article 12, Section 12.2.3 Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court within 30 days of the date of the written decision as follows:

(a) Notice of Appeal: The appeal shall be taken in such a manner as the Supreme Court or the environmental court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3, Vermont Statutes Annotated. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the DRB, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.)