



CODE ENFORCEMENT OFFICE

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DEVELOPMENT REVIEW BOARD STAFF REPORT

TO: Development Review Board
FR: Jeanne Francis, Assistant Zoning Administrative Officer, Code Compliance and Enforcement
DT: April 26, 2016
RE: Report on Appeal #16-0914AP; Appeal of a Administrative Officer's Zoning Notice of Violation (ZV # 300029) issued on February 22, 2016, for Permitting the occupancy of five (5) unrelated adults in a dwelling unit located in an RL zone inconsistent with the Comprehensive Development Ordinance (Article 13: Family Definition and Sec. 4.4.5(d)(5)(c). Unfinished attic constructed as habitable space without zoning approval (CDO Section 3.1.2.(b)(1)) for Premises Located at 17 Henry St, Burlington, Vermont

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Location: 17 Henry St, Burlington, Vermont **Tax Lot #** 045-1-242-000
Appellant: Jill Boardman, Owner
Applicable Regulations: CDO Articles 2, 3, 4, 5, 12, and 24 V.S.A. §4451 and 4454
Appeal # 16-0914AP

Appeal: Sec. 12.2.2 Appeals of Administrative Officer Decisions

- **Appeal filed at the Planning/Zoning office on March 8, 2016, addressing all 5 requirements outlined under Sec. 12.2.2**

Name and address of appellant:

Jill Boardman
PO Box 1224
Stowe, VT 05672

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

17 Henry Street

Reference to the regulatory provisions applicable to that appeal

Sec. 4.4.5 (d) (5) (c) and 3.1.2 (b) (1)

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Relief requested by the appellant

Finding of no violation

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

- ✓ No work has been done on the 3rd floor/attic since I purchased the property in 2010.
- ✓ There are 4 people living in the house.

• **Appellant Submittals**

Appellant did not submit any documentation with appeal.

• **City's Submittals**

- ✓ October 15, 2015, Notification to Appellant
- ✓ February 22, 2016, Notice of Violation
- ✓ Rental Registration Forms from 2003 to 2016
- ✓ Assessor's Records regarding use of Property from 1985 to 2015

Background Information:

• **Code Enforcement Zoning Files/Documentation:**

- State Registered Historical Structure
- August 31, 2002 – Written complaint – five Champlain College students occupying house; complaint unsubstantiated.
- ZP 10-0377CA: Replace all first and second floor windows with clad wood double pane windows and repair fascia – single family home.
- October 7, 2015, Code Enforcement Office received a complaint that more than 4 unrelated adults were occupying house located at Premises, within the RL zone, without zoning approval.
- October 15, 2015, Code Enforcement Office sent Owner notification of the complaint; Owner did not respond.
- February 22, 2016 Code Enforcement Office sent Owner notice of violation.
- March 8, 2016 Owner appealed notice of violation.

• **Code Enforcement Minimum Housing Records/Rental Registration Documentation*:**

- 2003 one unit, 6 bedrooms, 6 rental residents.
- March 19, 2004 then-Owner reported Premises was no longer rented
- 2005 – No documentation on file indicating Premises was a rental.
- 2006 – No documentation on file indicating Premises was a rental.
- Sept. 13, 2007 ownership transfer from Deborah Olsen to Jeffrey and Anya Bryam.
- 2008 – No documentation on file indicating Premises was a rental.
- 2009 – No documentation on file indicating Premises was a rental.
- April 19, 2010 Ownership transfer recorded in land records; Jill Boardman; Owner, Premises Owner-occupied.
- May 3, 2010 Rental Registration Forms submitted to Code Enforcement Office, asserting Rental

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Unit: Yes; #Fee Exempt: N/A; #Bedrooms: 5; #Residents 5; Functional Family: N/A; # Parking Spaces: 6; #Vehicles: 5. An inspection on May 2010 revealed, no tenants at the time; housing inspection May 4, 2010 deficiencies found and corrected July 16, 2016.

- April 7, 2011 Rental Registration Form submitted to Code Enforcement Office asserting “#Bedrooms: 5; #Residents: 4; #Parking Spaces: 6; #Vehicles: 4.
- March 28, 2012 Rental Registration Form submitted to Code Enforcement Office; Property Information Sheet was not included with registration.
- March 29, 2013 Rental Registration Form submitted to Code Enforcement Office asserting Rental Unit: Yes; #Bedrooms: 5; #Residents: 6; #Families: 1; #Unrelated: 6; #Functional Family: Yes; #Parking Spaces: 5; #Vehicles5.
- September 19, 2013 minimum housing inspection, deficiencies found and re-inspection property deficiencies rectified January 3, 2014.
- March 21, 2014 Rental Registration Form submitted to Code Enforcement Office asserting Rental Unit: Yes; #Bedrooms: 5; #Residents: 5; #Families: 1; #Unrelated: 5; Functional Family: Yes; #Parking Spaces: 5; #Vehicles: 5
- March 2, 2015 Rental Registration Form submitted to Code Enforcement Office asserting Rental Unit: Yes; #Bedrooms: 5; #Residents: 5; #Families: 1; #Unrelated: 5; Functional Family: Yes; #Parking Spaces: 5; #Vehicles: 5.
- February 18, 2016 Rental Registration Form submitted to Code Enforcement Office.

*Although these Certificates are issued with a 3-year expiration date, our protocol is to conduct routine inspections of all units every 1 to 1.5 years. No notes in the files referring to living space in the attic.

- **Assessor's Records/Documentation:**

- 1985: 6 rooms, 3 bedrooms; attic unfinished, drawing 1st and 2nd floor.
- 1993 notes: observed attic unfinished, drawing 1st and 2nd floor
- 2005: Address Change: Owner's New Mailing Address--17 Henry St.
- 2005: 302 sf finished attic space; letter on file from then-Owner dated May 25, 2005 identifying Premises as owner-occupied single family which she purchased mid December 2004. Assessor's field inspector was not able to enter the house for observation.
- 2015: Assessors Web Page dated November 30, 2015: 1 unit – 9 rooms/3 bedrooms; Attic 502 sf; basement is not finished.

- **Building/Trade Permits**

- ✓ Building Permits 2003 - Present: New windows on 1st and 2nd floor and repair fascia. Repairs to porch, and repair to roofing.
- ✓ Electrical permits 2003 – Present for new boiler, install new meter and repair/replace outlets, dedicated circuit line for dishwasher, wiring CO, replace overhead power to garage,
- ✓ Mechanical/Plumbing 2003-Present: Replace old hot air furnace with new hot air furnace.

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Findings:

Issue #1: Permitting the occupancy of five (5) unrelated adults in a dwelling unit located in an RL zone inconsistent with the Comprehensive Development Ordinance (Article 13: Family Definition and Sec. 4.4.5(d)(5)(c)).

CDO Sec. 4.4.5(d)(5)(c) requires that, “[i]n all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13....” Included within the definition of family is

“[n]o more than four unrelated adults and their minor children.”

By Owner’s own admission and statements from tenants, five (5) unrelated adults resided at the property during the fall of 2015.

Pursuant to evidence presented, statements from the Owner and the fifth tenant, the fifth tenant has moved out of the property and does not intend to return. Owner has informed fifth tenant that he may not resume residency at the property and has returned rent to him.

Issue #2: Unfinished attic constructed as habitable space without zoning approval (CDO Section 3.1.2.(b)(1))

CDO Sec. 3.1.2(b)(1) requires that: “...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...Increase in habitable living space (including, but not limited to, attic, bedroom, basement, garage, and winterizing or otherwise enclosing a porch).”

- No City zoning permits exist for conversion of the attic space at the property from unfinished to habitable.
- Assessor records reflect unfinished space from 1984 until at least 2005.
- 1993 Assessor’s field inspector makes a note s/he observed the attic was not finished, however, in 2005 then-owner sends in written letter attic is finished.
- From 2005 – Present, Assessor’s records show 302 sf of the attic is finished.
- Since 1984 Assessor’s records indicate there are 3 bedrooms at property which is consistent with 3 bedrooms on the 2nd floor.
- Zoning permits and consequently violations run with the property, not the owner. Owner’s statement that no work has been done on the 3rd floor/attic since her purchase in 2010 is irrelevant.

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Conclusion:

Based upon the above, the Code Enforcement Office respectfully requests the Board to find the following:

1. The Premises was in violation of the Comprehensive Development Ordinance (Article 13: Family Definition and Sec. 4.4.5(d)(5)(c)) by Permitting the occupancy of five (5) unrelated adults in a dwelling unit located in an RL zone. That violation is currently cured by the removal of the fifth tenant as well as the steps taken to prevent re-occurrence.
2. The Premises is in violation of Comprehensive Development Ordinance Section 3.1.2(b)(1) as unfinished attic space was converted to habitable space without zoning approval. Specific support for this finding:
 - Since 1984 Assessor's records indicate there are 3 bedrooms at property which is consistent with 3 bedrooms on the 2nd floor.
 - 1984 -2005 records show the attic is not unfinished.
 - 1993 Assessor's field inspector makes a note s/he observed the attic was not finished, however, in 2005 then-owner sends in written letter attic is finished.
 - From 2005 – Present Assessor's records show 302 sf of the attic is finished.
 - No municipal permits in City records to finish the attic for habitation use.

Recommendation:

Uphold issuance of Notice of Zoning Violation #300029 per the findings above.

Pursuant to finding 2 above, Code Enforcement asks the Board to condition Owner to remove habitable/finished attributes (attic space must revert to cold storage, including signage posted on the third floor access identifying it as cold storage) or obtain municipal approval for such conversion within twenty (20) days of Board's decision or enter into a settlement with the City to outline a timeline in which to come into compliance.