

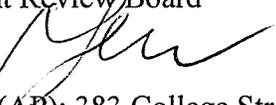
Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Kern Lerner 
Date: May 5, 2015
RE: 15-0849DT (AP); 383 College Street

Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

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.

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.

Appellant Statement/Response

See attached 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.

Recommendation: Deny the appeal and uphold the administrative adverse determination as per 15-0849DT and the above comments.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.

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APR 08 2015

DEPARTMENT OF
PLANNING & ZONING

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Attorney-at-Law
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Marc E. Wiener, Esq.
Alec K. Slater, Esq.

Ronieta F. Downey
Legal Assistant

April 7, 2015

To the Development Review Board, City of Burlington :

My clients, Drew and Dianne Chace have asked me to file an appeal of the adverse decision issued on zoning permit application 15-0849.

Decision under appeal : The application was submitted to the Department of Planning and Zoning requesting a determination that there are 14 existing residential units in the building. There are also 5 offices in this property. A copy of the determination is attached hereto along with the affidavit of Drew Chase, a copy of a rental registration from 2002 showing 14 declared residential units, as well as a copy of an invoice from 2001 from the City Public Works Department, also showing 14 residential units.

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

Regulatory Provisions : The statute applicant relies upon is 24 VSA 4454 establishing a 15 year statute of limitations.

Relief Requested: Applicant is requesting a determination that its property is not in violation of the City of Burlington Zoning Ordinance as configured with 14 residential rental units and 5 offices.

Grounds why relief is believed proper : Applicant (as individuals and presently as an LLC comprising Drew and Dianne Chace as members) has owned this property for 30 years, has made no structural changes or additions since it has owned the property and believe the property is in compliance with zoning regulations.

But for the absence of City records dating back prior to 2002, Applicant would have been able to show the use of the building with 14 residential units and 5 offices for over 15 years.

Marc Wiener

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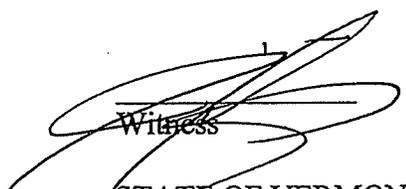
APR 08 2015

AFFIDAVIT OF DREW CHACE DEPARTMENT OF
PLANNING & ZONING

I, Drew Chace, being duly sworn, do hereby depose and state as follows:

1. My Wife Dianne Chace, and I, have owned first individually, then through our own company "Astra-Burlington, LLC" the land and premises designated as 383 College Street, Burlington, Vermont (the property).
2. There are fourteen residential rental units in the property, as well as five rented office spaces.
3. We have owned this property since 1985, and made no structural changes or additions to the property in that time period. Routine maintenance and upkeep have been made but nothing that alters the configuration of the building.
4. The number of units specifically has not changed since we have owned the property.

Dated at South Burlington, Vermont this 20th day of February, 2015.

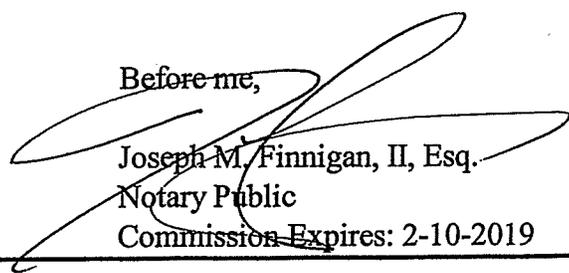

Witness


Drew Chace

STATE OF VERMONT
CHITTENDEN COUNTY, SS:

At South Burlington, in said County, on this 20th day of February, 2015, Drew Chace, personally appeared and he swore to the truth of this Affidavit to the best of his knowledge and belief.

Before me,


Joseph M. Finnigan, II, Esq.

Notary Public

Commission Expires: 2-10-2019

City of Burlington, Vermont

ZONING PERMIT

Pursuant to the provisions of Appendix A, Section 80-B of the Zoning Ordinances for the City of Burlington, Vermont, a zoning permit is hereby issued on February 24, 1975.

To:

The Fielding Corporation to convert the former Tau Epsilon Phi building at 383 College Street, Burlington, Vermont, to twelve apartments on the second and third floors, and five offices on the first floor. Also to erect a single flat against the building (1' x 5'). Replace a front window with a door.

R-75 zone

An appeal of the Zoning Permit so issued, may be taken within fifteen (15) days from the date of issuance of this permit, and plans may be reviewed in the Zoning Administrator's Office.

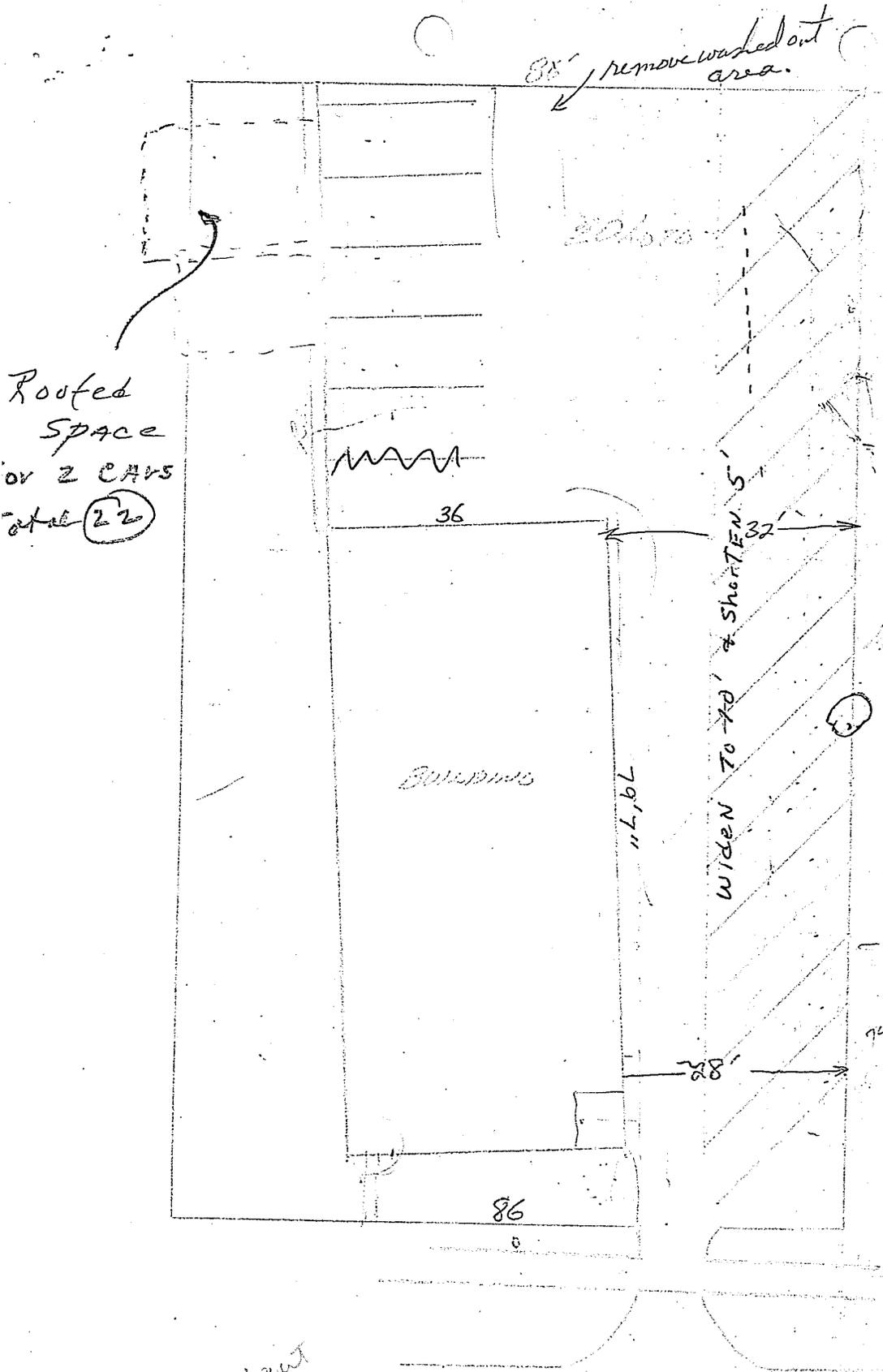
The final expiration date that appeals may be taken is ~~February 11, 1975.~~

March

Raymond A. Wheel

Raymond A. Wheel
Zoning Administrative Officer

\$125,000



The House Plan
 10' x 20'
 10' x 20'
 10' x 20'

at Corner St.
 Building
 Main Floor
 10' x 20'
 10' x 20' =

9x20

A. A Ingalls Mgr.
 Craig Butterfield F.I.
 863-5304

1974 12 unit
 approval

Carroll Street

Fincham Corp
 104 First Street
 University Ct. 02111

cost of rehab. est. of 25,000
 could get loan for 40,000

Stipulations for Certificate of Appropriateness to:
A.A. Ingalls

a) A further reduction in required parking spaces from 18 to 17 (zoning ordinance requires 21 spaces for uses proposed) with all parking to be provided south of the front building line parallel to College St. The Board is in complete agreement that the requirements in the zoning ordinance are overly stringent for this particular project since overlapping coverage is provided by the non-conflicting office and residential uses. The site is also one block from two primary bus routes.

b) Landscaping of the parking lot along the street frontage to screen the parked cars from the street.

c) Continuation of the screening along the westerly property line to minimize glare from parked cars.

d) Provision by a ramp at the front or rear entrance to give access to the handicapped to the basement or office level.

e) The provision of 2 controlled parking spaces within the "carport" is acceptable for this project but is not to be viewed as a precedent for future projects.

CITY OF BURLINGTON, VERMONT

ZONING PERMIT

Pursuant to the provisions of Appendix A, Section 80-B of the Zoning Ordinances for the City of Burlington, Vermont, a zoning permit is hereby issued on

March 14, 1978

To:

Don Emmons to convert the 12 Apartments and five offices building at 383 College Street, Burlington, Vermont into 16 Apartments and the removal of the five offices. Remove rear exterior doors and fill in the spaces.

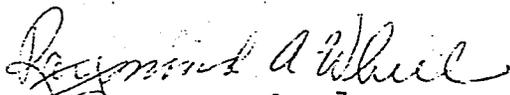
Subject to the approval of the Planning Commission for design review.

R-75 Zone

An appeal of the Zoning Permit so issued, may be taken within fifteen (15) days from the date of issuance of this permit, and plans may be reviewed in the Zoning Administrator's Office.

The final expiration date that appeals may be taken is

March 29, 1978



Raymond A. Wheel
Zoning Administrative Officer

\$16,300