



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11
Burlington, Vermont 05401
(802) 865-7122

**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 11/6/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Diane Dolliver
William Ward
Tim Ahonen

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of DIANE)
DOLLIVER Regarding the Rental) CITY OF BURLINGTON
Property at 122 Shelburne Street) HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 21, 2019. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Betsy McGavisk and Olivia Pena were also present. Petitioner Diane Dolliver was present and testified. Minimum Housing Inspector Tim Ahonen and William Ward, Director of Permitting and Inspections, were also present.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Petitioner Diane Dolliver is the owner of the rental property, 122 Shelburne Street, in the City of Burlington which is the subject of these proceedings.
2. On August 7, 2019, Minimum Housing Inspector Tim Ahonen conducted an inspection of the property and issued an order on September 5, 2019. In that Order, Mr. Ahonen noted 3 minimum housing violations at the property, including the lack of ventilation in the first floor bathroom.
3. On September 24, 2019, petitioner requested a variance from the code standard related to ventilation in the first floor bathroom. The other issues cited in the Order have been resolved.
4. Section 18-84(c) of the Minimum Housing Code requires every bathroom or toilet room to have one window opening to the outdoors or a fan or mechanical device vented to the outdoors to prevent the buildup of moisture.
5. The building was built in the early 1900’s. The bathroom at issue is in the middle of the building on the first floor so that there is no window opening to the outdoors; in addition, there is no fan that provides ventilation to the bathroom. Petitioner’s electrician reports that it is nearly impossible to

vent a fan to the outdoors because of obstacles (stairway, kitchen and chimney) on the north, east and south sides of the bathroom. Installing a fan would require building a 10-15 ft. soffit through the middle of the foyer and venting the fan on the front porch above the front door. Also, the exterior walls of the building are double brick.

6. Currently, there is only a sink and toilet in the bathroom and there is no evidence of a moisture problem. Code Enforcement does not object to granting a variance given the current state of the bathroom. However, they would like to be able to revisit the issue should moisture become a problem in the future.

CONCLUSIONS OF LAW

7. To grant petitioner a variance from the strict application of the Code, the Board must determine that:

by reason of an extraordinary and exceptional situation unique to the property or circumstances involved, the requirements of this chapter would result in peculiar and exception difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued....

Minimum Housing Code, Sec. 18-42(c). Petitioner has met this standard: it is not possible to add a window opening to the outdoors or to install a fan venting to the outdoors in the bathroom.

8. Once this standard is met, the Board's discretion to grant a variance is further circumscribed by another provision of Section 18-42(c):

[P]rovided, however, that the board shall have the power to vary from the strict application of the requirements of this chapter only to the least extent necessary to relieve the difficulties or hardships involved, and only if such variance will not cause substantial detriment to the health, safety, morals and general welfare of the persons residing in the dwelling units involved or to the general public and will not cause substantial impairment of the intent and purpose of this chapter....

The Board concludes that this standard has also been met at this time. There is no evidence of a moisture problem in the bathroom so granting a variance will not cause substantial detriment to the health, safety, morals or general welfare of the tenants residing in the unit.

ORDER

Accordingly, it is hereby ORDERED:

9. The request of petitioner Diane Dolliver for a variance from Section 18-42(c) of the Minimum Housing Code regarding ventilation in the first floor bathroom is hereby GRANTED subject to the following conditions:

a) To ensure that any subsequent purchaser of the property has notice that a variance has been granted, petitioner shall cause a copy of these Findings of Fact, Conclusions of Law, and Order to be recorded and indexed in the land records of the City of Burlington.

b) This variance does not preclude Code Enforcement from citing the bathroom in the future should there be signs of a moisture problem.

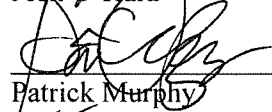
c) This variance is granted under the condition that the bathroom only have a sink and toilet in it. Should the bathroom be remodeled in the future, including but not limited to the installation of a shower or bathtub, this variance shall no longer be in effect.

Dated at Burlington, Vermont this 6th of November, 2019.

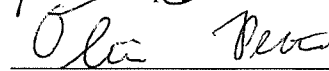
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



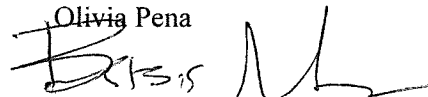
Josh O'Hara



Patrick Murphy



Olivia Pena



Betsy McGavisk