



Department of Permitting and Inspections

645A Pine St, PO Box 849
Burlington, VT 05402-0849
VOICE (802) 863-0442
FAX: (802) 652-4221

TO: Development Review Board

From: Ted Miles,
Department of Permitting and Inspections

Date: Nov 6, 2019

RE: Report on **Appeal #20-0350AP**; Appeal of an Administrative Officer's Zoning Notice of Violation (ZV #372003) issued on September 9, 2019, for more than four (4) unrelated adults living at the property at 38 Greene St, Burlington, Vermont.

Note: This is the Administrative Officer's report; decisions are made by the Development Review Board, which may overturn or uphold the Zoning Administrator's Decision. **THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Location: 38 Greene St, Burlington, Vermont

Tax Lot # 045-2-087-000

Appellant: Leon Beliveau

Representative: Leon Beliveau

Applicable Regulations: CDO Articles 2, 3, 4, 5, 12 and 24 VSA §4451

Appeal # 20-0350AP filed on September 23, 2019.

Violation:

- **More than four unrelated in a Residential Medium density zone**

This property is in a Residential- Medium density zoning district. The building is a single family home that is currently occupied by seven unrelated adults in violation of Comprehensive Development Ordinance (CDO) Section 4.4.5 (d)(5)(c) Residential Density.

Pursuant to CDO §4.4.5(d)(5)(c), "[i]n all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13." Family is defined as:

“[o]ne or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes. Occupancy by any of the following shall be deemed to constitute a family:

- (a) Members of a single family, all of whom are related within the second degree of kinship (by blood, adoption, marriage or civil union).
- (b) A “functional family unit” as defined below.
- (c) Persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the “Fair Housing Amendments Act of 1988”.
- (d) A state registered or licensed day care facility serving six or fewer children as required by 24 V.S.A. 4412(5), as the same may be amended from time to time.
- (e) No more than four unrelated adults and their minor children.

Provided that a dwelling unit in which the various occupants are treated as separate roomers cannot be deemed to be occupied by a family....” CDO Sec. 13.1.2. *See full “family” definition attached.*

Appellant does not dispute occupancy of the property by 7 unrelated adults. Appellant has not demonstrated or even claimed that the occupancy at 38 Greene Street meets any of the identified family definition statuses, (a) – (e) above, therefore, the notice of violation was proper and should be upheld.

Enforcement Timeline

1. January 9, 2015. Zoning complaint initialized from a former zoning enforcement officer stemming from a conversation with the owner about six people living at 38 Greene St and shared parking with 52 Hickok Place. NO Actions taken on this complaint.
2. May 2, 2019. Complaint followed up since no action was taken previously. Warning letter sent to owner about complaint of more than four unrelated living at the property. No response from owner.
3. August 30, 2019. Code Enforcement staff visited the property and noted there were seven names listed on the mail box on the front of the house.

4. September 4, 2019. Code Enforcement staff did a follow up at the property and spoke with one of the tenants at the property who confirmed that there were seven people living at the property and that the names on the mail box were correct.
5. September 9, 2019. A notice of Violation was mailed to the owner of the property noting the violation of more than four unrelated adults living at the property.
6. September 23, 2019. Received appeal of Notice of Violation of more than four unrelated adults living at the property.

Background Information:

- Built circa 1910 as a single family home. Building is listed on State historic registry.
- Zoning permit obtained October 9, 2002 to replace a window on the third floor level.
- Mr. Leon Beliveau purchased the property in May 1997.
- Property listed in Assessor's Records as a single family home with a 1,880 sf lot.
- RM Zone, Ward 2E

Response To Appellant's Claims:

Adoption process—

Appellant claims that zoning amendment (ZA) #2000-01 was not properly adopted as it was “unilaterally” amended by the City Council without the Planning Commission or the Burlington Legal Voters. The process for zoning bylaw amendments in Burlington is set forth in State Statute. The general process includes public hearings by both the Planning Commission and then the City Council, it does not require a vote of the Burlington Legal Voters. 24 V.S.A. §§4441-2. ZA #2000-01 had a public hearing before the Planning Commission on July 13, 2000. It was further discussed at the Planning Commission on August 10, 2000 and then passed out to the City Council on August 24, 2000. It is noted in the July 13, 2000 minutes that Leon Beliveau spoke during the public hearing. *See attached public hearing notice, agendas and excerpt from the July 13, 2000 minutes*. The amendment was adopted over 19 years ago. It has been and continues to be enforceable.

Single Non-Family Dwelling—Appellant requests that if the property is not a single non-profit housekeeping unit that the Board identify it as a Single “Non-Family” Dwelling. Appellant's requests are misplaced. If the occupants do not meet one of the 5 statuses listed in the family definition, then they do not qualify as a family and are in violation of the ordinance. Appellant's appeal does not demonstrate compliance with any of the 5 statuses. If Appellant was asserting a “functional family” status, that requires approval from the City, there has been no application for “functional family” status at this property.

Summary:

It has been undisputed that the Property is currently occupied by 7 unrelated adults. Pursuant to the definition of family the maximum occupancy is 4 unrelated adults unless another family status is met. Appellant has no other zoning determinations or approvals for the occupancy of this property. The notice of violation was proper and should be upheld.

Conclusion:

The Assistant Zoning Administrative Officer for Code Compliance/Enforcement hereby requests the Development Review Board uphold ZV #372003 as valid. The following stipulations are recommended:

1. Within 30 calendar days from date of DRB decision, Appellant shall request an agreement from the Zoning Administrator (to be executed within forty-five [45] calendar days from date of DRB decision) that includes reasonable timelines in which to cure the violation noted in ZV #372003.