

## Department of Permitting & Inspections

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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** January 22, 2020  
**RE:** 20-0362DT; 86 North Union Street

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**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.**

Zone: RM Ward: 2C

Owner/Appellant: Diemer Apartments, LLC

**Request:** Appeal of administrative zoning determination as to 15-year determination of occupancy of dwelling by 6 unrelated adults.

### **Overview:**

The appellants are seeking an affirmative determination under the 15-year statute of limitations as to occupancy of a dwelling unit by 6 unrelated adults. Such determination request was reviewed administratively and resulted in an adverse determination due to inconsistent occupancy and discontinuance. An appeal of that determination has been filed and is now before the Development Review Board.

**Recommendation:** Uphold administrative determination based on the following findings and conditions:

### **I. Findings:**

The subject residence is a triplex located in the residential – medium density (RM) zone. One of the dwelling units within the triplex contains 6 bedrooms and has been let to 6 unrelated adults for a number of years. Within the RM zone, dwelling units may be occupied by “families,” including up to 4 unrelated adults. Occupancy by 6 unrelated adults is not permitted. As a result, the appellants submitted a determination request to recognize continuous occupancy of the subject dwelling unit by 6 unrelated adults for 15+ years. Such recognition would not “grandfather” or permit the use, but it would result in deeming the zoning violation unenforceable.

The appellants provided leases for the duration of their ownership going back to 2006. An affidavit from prior owners, Charles and Cynthia Burns, attested to occupancy between 1986 and 2001. City rental registration records were used to document occupancy in 2004 and 2005 (15 years from the September 2019 determination request).

Following review of the records and discussions with the appellants and the asst. city attorney, an adverse determination was issued November 7, 2019 as noted below.

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize that the 6-bedroom unit within the triplex has been continuously occupied by 6 unrelated adults for over 15 years. The City reviewed the following documents/evidence to form its determination:

- The City's zoning permit records
- The City's property assessment records
- The City's rental registration records
- The City's 2008 Comprehensive Development Ordinance and as amended
- Property leases dating from the present back to 2006
- Affidavit of Charles and Cynthia Burns dated 9/30/19 and 10/1/19

Based on the review of these items, it is the determination of the Administrative Officer that the subject dwelling unit has not been continuously occupied by 6 unrelated adults for more than 15 years.

- The rental registration records from 2004 and 2005 both state occupancy by 5 unrelated residents. 15 years from this determination request extend back to September 2004.
- The property leases appear to show discontinuance of occupancy by 6 unrelated adults. Discontinuance is a period of 60 days or more per Sec. 5.3.2, "*Bianchi*" controlled uses, structures, and lots, of the Comprehensive Development Ordinance. The May 2007 lease contains 4 unrelated leasees and is amended in August to contain 2 more unrelated leasees. Similar changes in occupancy are noted in subsequent leases. There is a 3-month gap between the 6/1/10 – 5/27/11 lease and the subsequent 8/1/11 – 5/26/12 lease. There is a similar gap between the 6/1/12 – 5/26/13 lease and the subsequent 8/15/13 – 5/26/14 lease.

There is no zoning permit on file permitting occupancy of this dwelling unit by 6 unrelated adults. As such, it is in violation of the Comprehensive Development Ordinance. The records show a lack of consistent occupancy by 6 unrelated adults over the course of the last 15 years. This determination makes no findings as to the triplex use of the property.

An appeal of this adverse determination was filed November 21, 2019, within the 15-day appeal period. The appellants requested deferral of the appeal hearing until January 22, 2020.

The appeal requests relief on three grounds:

- 1) The appellants disagree with the determination and assert that the property is in compliance with the city ordinance.
- 2) The appellants provide 30 years of documentation showing consistent occupancy.
- 3) The appellants dispute the dates used in the administrative determination.

A dwelling unit within the residential zones may only be occupied by a "family" as that term is defined in Article 13 of the CDO. Up to 4 unrelated adults constitute a family as defined in Article 13. More than 4 unrelated adults do not. There is provision in Sec. 4.4.5 (d) 5 C, *Residential Occupancy Limits*, to exceed more than 4 unrelated adults within a dwelling unit in the residential

zones. Approval under this provision has not been sought or obtained. Lacking permit approval, the only other way occupancy of 6 unrelated adults in the subject dwelling unit could be “compliant with the city ordinance” would be as a pre-existing nonconformity (i.e. grandfathered). Such recognition has not been sought or obtained.

Documentation provided by the appellants pertains to occupancy of the subject dwelling unit back to 1986. The problem arises due to inconsistency of occupancy as reflected in the documentation. The appellants provided lease documentation back to 2006. In order to reach a full 15 years from the September 2019 determination request, documentation back to 2004 is necessary. The city’s rental registration records were used to fill this gap. Both the 2004 and 2005 rental registration records clearly show 5 unrelated adult occupants in the subject dwelling. There is no evidence to the contrary as to these two years. The 15-year benchmark is missed. Furthermore, within the lease documentation provided by the appellants, there are apparent gaps in occupancy. As noted in the determination findings, there are gaps in occupancy spanning more than 60 days (May 27, 2011 – August 1, 2011 and May 26, 2013 – August 15, 2013). There is also an apparent reduction in occupancy to 4 unrelated adults in May 2007 that does not increase to 6 until August 2007. Per Sec. 5.3.2, “*Bianchi*” controlled uses, structures, and lots, of the CDO, reestablishment of the violation may not occur following discontinuance of more than 60 days.

Nothing in the appeal elaborates as to the dispute of the dates used in the determination. All of the dates used in the determination stem from documentation relative to the determination request.

The records show that the subject dwelling unit has been occupied by 6 unrelated adults for a number of years; however, the records also show that occupancy has fluctuated over the years between 4 and 6 unrelated adults and has even discontinued from time to time. The records fail to establish consistent, uninterrupted occupancy of the subject dwelling unit by 6 unrelated adults for at least 15 years. As a result, the present occupancy by 6 unrelated adults is not protected by the 15-year statute of limitations. Based on apparent discontinuance, the subject unit may only be occupied by 4 or fewer unrelated adults or another type of “family” as defined in Article 13.

## **II. Recommended Motion:**

Uphold the adverse determination of 20-0362DT.