



**Burlington Development Review Board**

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*Missa Aloisi*  
*Jonathan Stevens*  
*Bob Schwartz*  
*Alexandra Zipparo, (alternate)*  
*Israel Smith, (alternate)*

**Burlington Development Review Board  
Findings of Fact  
Deliberative Hearing June 23, 2014**

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**IN RE:** Appeal of Administrative Decision; regarding Notice of Violation 269613: Change of use: conversion of single family residence to a hotel without an approved zoning permit.

**Members Present:**

Austin Hart, Jonathan Stevens, Michael Long, Jim Drummond, Brad Rabinowitz, Alexandra Zipparo, Israel Smith

**Staff member present:** Mary O’Neil

**File 14-1089AP      Location:** 17 Eastman Way    **Zone:** WRL (Waterfront Residential Low Density)

**Notice of Violation:** May 5, 2014    **Appeal filed:** May 15, 2014

**Appellant/Representative:** Lois Helland/Randy Amis  
400 Fox Moor Lane  
Eau Claire, WI 54701

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**I. Findings**

**Background**

- Existing single family home., built in 2005. Contains 6 Rooms with 2 bedrooms and 2 bathrooms.
- June 25, 2013, property with a single family home transferred to Lois Helland;
- Property is listed on the AirBnB Website for rent at \$325 per night.
- August 2013, comment from a guest on website supports claim that the illegal rental of the lodging has occurred at least since that time.
- November/December 2013, neighbors started filing complaints with the Code Enforcement Office alleging Premises being rented out on a nightly/weekly basis that resulted in excessive noise.
- December 4, 2013 a notification/warning letter was sent to Lois Helland, owner of property, informing her of complaints and providing an opportunity to refute the allegations.
- December 12, 2013, received a response from Mark Helland, co-owner, requesting additional week to refute the allegations; one week extension was granted.
- December 2013, Code Enforcement continued to receive additional complaints.

- April 2014, Advertisement on AirBnB website confirming premises continued to be rented on a daily basis (with a minimum 3 day stay). Calendar on AirBnB website indicates Premises is booked until August 2015.
- April 2014, AirBnB website discloses that Brooke and Alissa Monte manage the property and live nearby.
- Code determined that based on use the structure is a “hotel” as defined in the Comprehensive Development Ordinance, as follows:

***Hotel, Inn or Motel:** An establishment providing for a fee three or more temporary guest rooms and customary lodging services, and subject to the Vermont rooms and meals tax.*

- A hotel, motel or inn is not a permitted use in the WRL zoning district.

**Appellant Statement:**

1. Use of property is a permitted use, single family residence, in a WRL district
2. Use is inconsistent with Hotel, Inn or Motel; as defined in Article 13 Sec. 13.1.2 of the CDO
3. Residence is one dwelling unit, not 3, or rooms.
4. There is no hotel lodging services such as maid service, room service, valet parking, concierge services or other “customary lodging services” provided
5. Owner isn’t occupying the premises at the time of the rentals nor is a manager
6. There is nothing to distinguish the use being made of the property now from any other rental of a single family residence on the lake.
7. The ordinance definition of a hotel does not apply to the use of this property.
8. Appellant request a determination that there is no zoning violation in this matter.

**Determination and Conclusions**

- The subject residence is advertised/rented on a short-term basis, i.e. for less than a 30-day period.
- The website advertisement refers to as many as 6 people renting at any given time. This does not comply with the allowable occupancy by a single “family” as defined in the CDO that limits the number of unrelated occupants.
- The nature of short term lodging has changed with a similar type of rentals that can now be found all over the world.
- All hotels range in services from the very basic bed and TV, to luxury hotels with a great variety of services.
- Typical lodging services found in many hotels are provided at the subject rental, as evidenced by website indicating fresh linens, shampoo, and coffee being provided, that the kitchen is stocked, a land line phone is available for incoming/outgoing calls and a bottle of wine is served. This situation certainly provides more services than one would find in typical house rentals.
- Managers for the property greet customers upon arrival, open the door, show the house, and leave the key (similar services to a concierge). They are available via phone (similar to picking up the phone in a hotel room).
- Renting for less than a 30 day period requires payment of Vermont rooms and meals tax.
- The residence has not been registered or inspected as a rental regarding meeting minimum life safety codes.

- The use of the subject house complies with the CDO definition of a “**Hotel, Inn or Motel**”. It differs from a single family residence as it serves the public by providing short-term rental subject to rooms and meals taxation. Further, the rental provides certain guest services typically found in a hotel, but not found in a usual rental situation.

**Related CDO Definitions:**

- **Bed and Breakfast:** *An owner-occupied residence, or portion thereof, in which short-term lodging rooms are rented and where only a morning meal is provided on-premises to guests. Subject residence is not owner-occupied, does comply with short-term lodging, and morning meals are not served.*
- **Boarding House:** *A building or premises where rooms are let to individuals for compensation for a period of time greater than thirty (30) days, and where meals may be regularly served in a common dining area. Hotels, motels, apartment houses, bed and breakfasts, dormitories, sorority, fraternities and historic inns, shall not be considered boarding houses. Individual rooms are not rented for compensation, the entire structure is. In subject case, the period of rental is less than 30 days for the entire house.*
- **Commercial:** *Any activity involving the purchase, sale, storage, or other transaction regarding the disposition of any article, substance, commodity, or services for consideration and profit; and the maintenance or conduct of offices, professions, dwelling rooms and units, or recreational or amusement enterprises conducted for profit. This definition supports a change in use at the premises from residential to commercial use as the renting of the unit is conducted for profit.*
- **Dwelling Unit, Single Detached:** *Free standing residential structure containing a single dwelling unit occupied by a "family." and where rooms are not let to individuals. Also known as a single family residence (SFR). (See definition of Family). There is no consistency regarding the number of or relationship of tenants. According to the comments listed within the AirBnB advertisement, at times there up to six unrelated occupants. Therefore, occupancy is not always by a “family” as defined in the CDO as follows:*
- **Family:** *One 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:*
  - *Members of a single family, all of whom are related within the second degree of kinship (by blood, adoption, marriage or civil union).*
  - *A “functional family unit” as defined below.*
  - *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”.*
  - *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.*
  - *No more than four unrelated adults and their minor children.*

*For purposes of this definition of family, a group of adults living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in residential neighborhoods shall*

*be regarded as a “functional family unit” and shall also qualify as a family hereunder. There is no consistency with tenants.*

- **Owner Occupied:** *Where owner occupancy is required by this ordinance, owner occupancy shall mean occupancy of premises by an owner for at least 50% of the year. Owner does not occupy the dwelling for 50% of the year. Her primary residence is in Eau Claire, WI.*
- **Public Use:** *A use that is owned and operated by a public agency, or by a private/non-profit entity for use by the general public without unreasonable restriction. This dwelling unit is privately owned and used by the general public without unreasonable restrictions.*
- **Rental Dwelling Unit:** *Any dwelling unit which is made available to a non-owner by another for compensation, pursuant to a lawful lease or rental agreement, whether oral or written, expressed or implied. Chapter 18 of the Burlington Code of Ordinances does not recognize the unit as a rental if rented for less than a 30-day period.*
- **Residential:** *Regularly used by its occupants as a permanent abode, which is made one’s home as opposed to one’s place of business and which has housekeeping and cooking facilities for its occupants only. The current use does not meet this definition as occupants do not use it as a permanent abode and Owners are compensated for the temporary use the house.*
- **Rooming Unit:** *as defined by Chapter 18 of the Burlington Code of Ordinances. Examples include dormitories, fraternities, sororities, and boarding houses. This shall not include units for the temporary occupancy of patients or guests in a hospital, hotel, motel or convalescent facility. Any four (4) “rooming units” shall be considered a single housing unit in calculating.*  
*Rooming Unit, as defined by Chapter 18 of the Burlington Code of Ordinances, shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes. The current occupancy of this residence is as a single entity and not by rooms.*

## **I. Evidence Presented**

The Board examined the materials submitted in support of this request.

## **II. Minutes**

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

## **IV. Motion**

**Motion:** Austin Hart

I move that the Board uphold the Code Enforcement findings regarding Notice of Violation #269613/14-1089AP and adopt the staff recommended findings with the following modifications:

The Appellant did not contest many of the factual allegations of Code Enforcement, but challenged the conclusion that the use had been changed from the permitted single family use. The Board heard testimony from the Appellant and neighbors on the nature of the use and the impacts on the

neighborhood. Although the use, as described at the hearing, does not neatly fit into the definition of “hotel, inn or motel”, the Board finds that the use most closely fits within that category. The CDO directs the Board to find the most appropriate use classification where the use does not clearly fit into any named type of use. Given the significant impacts on the neighborhood, which are different from those typically associated with single family use, the Board cannot find that the property is being used simply as a single family home. The Board is only upholding the notice of violation. The Board does not have the authority to impose sanctions or other remedies as requested by Code Enforcement. Pursuing sanctions or remedies is up to Code Enforcement.

**Second:** Brad Rabinowitz

**Vote: 6-1** (J. Stevens opposed), **motion carried**

Dated at Burlington, Vermont, this \_\_\_\_ day of July, 2014.

Respectfully Submitted,

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Austin D. Hart, Development Review Board Chair

**Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the Supreme Court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board’s decision.**