

MEMORANDUM

To: Tom Malley, Code Enforcement Officer
Nelson Ortega, Code Enforcement Officer

From: Laura Games, Enforcement Prosecutor

Date: July 1, 1999

cc: Director, Planning & Building
File

Subject: Prosecution – 32 Kinsley St. & 366 Main St. – Illegal Units

As you probably know, we have a somewhat pervasive problem with buildings in the City that have been illegally chopped up without proper permits. The two cases we have currently pending may be somewhat typical of most of them. That is, numerous notices of violation were issued sometime ago over a period of years with no discernable follow-up or resolution. As far as these two properties go, we have most recently demanded that the owners obtain the proper permits/approvals and they have not.

Because of the lack of response from these two owners, I had a discussion with Legal regarding how we should proceed given the existing documentation and chronology of these two cases. We have been asked to do the following:

1. Check out/research rental properties in the immediate area of 32 Kinsley Street and 366 Main Street and document their legal/illegal status.
2. Check out/research rental properties in other comparable areas and do the same.

This documentation should enable us to determine how "out-of-character" or how "in-character" these two buildings are with the general area. We will then arrange a meeting with the planning staff to devise a "reasonable" approach to deal with these buildings. Whether or not this will involve a court action or a compromise agreement, I can't say at this point.

I will leave it to you both to determine which properties/areas should be looked at. We should probably try to put something together within the next couple of weeks. Let me know whatever questions or concerns you may have.

BUILDINGS WITH ILLEGAL UNITS

- | | | |
|-----|--------------------|--|
| 1. | 32 Kinsley Street | Legal 2-unit converted to 11-unit building |
| 2. | 42 Kinsley Street | Legal 5-unit converted to 10-unit building |
| 3. | 33 Bridge Street | Legal 2-unit converted to 6-unit building |
| 4. | 3-5 Bridge Street | Legal 2-unit converted to 6-unit building |
| 5. | 4-6 Auburn Street | Legal 3-unit converted to 16-unit building |
| 6. | 14 Auburn Street | Legal 4-unit converted to 6-unit building |
| 7. | 366 Main Street | Legal 1-unit converted to 5-unit building |
| 8. | 44 Lovell Street | Legal 1-unit converted to 2-unit building |
| 9. | 1 Amory Street | Legal 1-unit converted to 3-unit building |
| 10. | 3 Amory Street | Legal 2-unit converted to 3-unit building |
| 11. | 5 Amory Street | Legal 1-unit converted to 3-unit building |
| 12. | 7 Amory Street | Legal 2-unit converted to 3-unit building |
| 13. | 139 Pine Street | Legal 5-unit converted to 6-unit building |
| 14. | 109 Pine Street | Legal 4-unit converted to 5-unit building |
| 15. | 10 Hanover Street | Legal 2-unit converted to 4-unit building |
| 16. | 3 Cottage Street | Legal 5-unit converted to 6-unit building |
| 17. | 14-20 Amory Street | Legal 5-unit converted to 25-unit building |
| 18. | 22 Amory Street | Legal 1-unit converted to 2-unit building |
| 19. | 24 Amory Street | Legal 1-unit converted to 2-unit building |

BUILDINGS WITH ILLEGAL UNITS

1. 32 Kinsley Street – B&B Associates

In January 1999 code enforcement discovered illegal units at this building when we responded to a tenant complaint regarding an unusually hot wall, inability to open windows and roaches. Carbon monoxide instrumentation detected a CO problem in an 11-year-olds bedroom. (The mother had been having a hard time waking the child in the morning). It turned out that the chimney had been plugged.

This building was converted from a legal 2-unit building to an 11-unit building around 1979-1981. Mr. Blanchard purchased the property in 1979.

Tax Cards

8/77 3 units
10/80 8 units
6/92 11 units

Directory Listings

1970-1972 2 units
1974 11 units
1975-1979 3 units (Purchased by Mr. Blanchard)
1983-1984 no report
1986 3 units
1987 8 units

Notices of Violation Sent

1981 Addition of apartments without permits
1984 Addition of apartments without permits
1986 Addition of apartments without permits

2. 42 Kinsley Street – Kinsley Realty Trust

Building has been converted from a legal 5-unit building to a 10-unit building sometime around 1994. The current owner has owned it since 1994.

Building Records

5 unit building in 1993

Directories

1982-86 5 units
1988-93 7-8 units

3. **33 Bridge Street – L&G Properties LLC**

A drive-by inspection earlier this year revealed that exterior fire escapes had been added. A site inspection and research of records by code enforcement revealed that this building had been converted from a legal 2-unit building to a 6-unit building around 1995-1996. Mr. Lavoie purchased the property in 1996.

Tax Cards

1975 2 units
1994 2 units

Directory Listings

1975-1996 2 units
1998 5 units

4. **3-5 Bridge Street – Blanchard**

This building was converted from a legal store and two units to a store and six units around 1987. We had been called to the residence a few times to investigate water leaking through electrical fixtures (a fire hazard). Blanchard has owned this property since 1987.

Directory Listings

1979-88 1 unit – commercial
1988 No information
1993 2 units
1996 No information
1998 5 units

Notices of Violation Sent

1987 Addition of apartments without permits

Other

2/87 Owner applied for variance to convert a store and two-unit building to a store and five-unit building. Application was withdrawn. Signed site plan submitted showing store and 2 dwelling units.

5. **4-6 Auburn Street – Blanchard**

This building was converted from a legal three-unit building to a 16-unit building over a period of time without permits or approvals. The current owner has owned the building since 1989. Since that time the building has been converted from 8 units to 16 units. Code enforcement was called to the building by the Fire Marshal because of repeated calls for faulty smoke alarms. A site visit revealed water leaking in and around electrical fixtures (a fire hazard).

Tax Cards

1969 3 units
1981 9 units
1993 15 units

Directory Listings

1969 3 units
1970 5 units
1972 8 units
1975 7 units
1979 10 units
1983 10 units
1988 8 units
1993 10 units
1998 14 units

Notices of Violation Sent

1985 Addition of apartments without permits

6. **14 Auburn Street – Dunstable-Ledge Realty LLC**

Purchased in 1989. Converted from a legal 4-unit building to a 6-unit building between 1989 and 1993.

Building Files

1989 4 units

Directories

1989 4 units
1993 6 units

7. **366 Main Street – Ivon Boyer**

This building was converted from a single family home to a 5-unit building around 1984. Title transferred to Mr. Boyer from mother/wife in 1985.

Tax Cards

1975 2 units
1994 2 units

Directory Listings

1969-1978 1 unit
1982 3 units
1984 5 units

Notices of Violation Sent

1989 Addition of apartments without permits
1999 Addition of apartments without permits

8. **44 Lovell Street – Richard Grauslys**

Owned since 1988 by the current owner, the building was converted from a single family home to a two-family around 1988. Code enforcement called to building because of severe leaking sewage problems.



City of Nashua
Code Enforcement Department
City Hall - 229 Main Street
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Nashua, New Hampshire 03061-2019

Code Enforcement 589-3100
Fax 589-3119
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CODE ENFORCEMENT

Jacques Poulin
P.O. Box 160
Nashua, NH 03061

April 2, 2003

#34,164

Re: Notice of Violation, Properties at 1 and 3 Amory Street, Nashua, NH

Dear Mr. Poulin:

The City's Electrical Inspector issued a verbal Stop Work Order regarding the electrical permit for addition of 3 meters at 1 Amory Street, which was mistakenly issued. The reason for the Order is that your building at 1 Amory Street is supposed to be a single-family home, not a three-family building. In addition, your building at 3 Amory Street is supposed to be a two-family, not a three-family. No zoning approvals or building permits were ever issued for conversion of these buildings into three-family homes.

The Nashua Zoning Board of Adjustment (ZBA) upheld the Zoning Administrator's decision that 1 Amory Street was not a legal three-family building on December 10, 1985. Although the owner applied to the ZBA for a variance after-the-fact to maintain 1 Amory Street as a three-family (March 25, 1992) the variance was denied. During the December meeting, the Zoning Administrator had also determined that 3 Amory Street was supposed to be a two-family, not a three-family.

You must convert these buildings back to their legal status. Maintaining these buildings as three families is a violation of Sections 6-8, 13, 16 and 19 of the Nashua Building Codes as well as Sections 16-227 and 254 of the Nashua Zoning Ordinances. Please contact me to discuss your schedule for converting these buildings back to their legal status.

If you disagree with this decision, you have thirty (30) days from receipt of this letter to appeal the decision to the Nashua Zoning Board of Adjustment. Should you have questions, please do not hesitate to contact me at (603) 589-3102. Thank you in advance for your cooperation.

Respectfully,

Laura V. Games, Esq.
Manager, Code Enforcement

cc: Manager, Building Safety Department
Code Enforcement Officer Malley, File

From: Connell, David
Sent: Wednesday, December 10, 2003 11:25 AM
To: Games, Laura
Subject: RE: Illegal Units

sounds good

-----Original Message-----

From: Games, Laura
Sent: Wednesday, December 10, 2003 10:44 AM
To: Connell, David
Cc: Santa, Michael; Hersh, Katherine
Subject: RE: Illegal Units

Dave

Thanks for your response. The answer to all your questions is no. I also do not know how these things have been handled in the past. I guess that you could say the problem is that they weren't handled at all. I don't believe that the meter costs anything, it is reconfiguring the electrical panel that may cost substantially because circuits have to be traced and somewhat rewired.

Our intent would be to deny permits for activities such as adding electrical meters, adding a separate heating system, or other activity directly associated with the alleged illegal unit. We would also inform the owner by letter that our records indicate that no permits or approvals were issued for the additional unit. This Notice would be placed in the assessing file, the building file and zoning files to place potential buyers on notice. Hopefully, this would force the owner to pursue the required approvals. If they didn't like the enforcement decision they could appeal to the ZBA and they could make the determination.

I am told that the ZBA is routinely approving additional units that have been in place for a long period of time.

Laura

-----Original Message-----

From: Connell, David
Sent: Tuesday, December 09, 2003 6:00 PM
To: Games, Laura
Cc: Santa, Michael
Subject: RE: Illegal Units

Typical illustration of the general code enforcement problem, right? The problem is not the bad man ordinance but the affirmative defenses of estoppel, administrative gloss, selective enforcement, systematic nonenforcement, etc. This fact pattern seems to revolve around the electrical permit. (The 1987 special exception presentation kind of cancels out the assessing records.) Anything in the file to show what the applicant stated about the # of units in 1990? Anything about what the city officials said to the applicant? Observed at the site? Any alternative legitimate uses for a 3d electric meter that could explain its installation? What's the cost of the meter? Any more improvements done "in reliance" on the electrical permit (i.e., city "approval" of the 3d unit)? Any history of how such issues have been handled in past? Are you ready to pursue this person for the illegal unit at this point?

-----Original Message-----

From: Games, Laura
Sent: Tuesday, December 09, 2003 1:34 PM
To: Connell, David
Cc: Santa, Michael

Subject: Illegal Units

Dave

I know that we have discussed this before but I just wanted to make sure that we are doing the right thing in light of our somewhat unconstitutional "bad guy" ordinance (Section 1-12).

We have scant evidence that a two-family building was converted to a three-family without permits or approvals sometime between 1970 and 1985. Even though assessing records documented that it was a three-family in 1985, the previous owner repeatedly stated in a zba hearing for a special exception (for in-home day care) in 1987 that the building was a two-family. The special exception was granted.

In 1990 the owner applied for and obtained an electrical permit to add a third meter (most likely for the illegal third unit). Today, the current owner came in to get a mechanical permit to add a third heating system since the two apartments on the first floor are served by only one. I believe that if we issue the permit knowing that this is supposed to be a two-family instead of a three-family we are essentially sanctioning the illegal third unit. Of course the idea came up that we could possibly issue the permit but put in a line, which stated that "our records show that this is supposed to be a and this permit in no way constitutes approval the illegal unit." However, if we do this it takes away our administrative ability to force the issue. In effect, we may have already sanctioned it when we issued the electrical permit in 1990.

What do you think?

Thanks for your assistance.

Laura