

January 19, 2021

RE: APPEAL - DENIAL OF SHORT-TERM RENTAL BUSINESS LICENCE 1132 CHAPMAN STREET

Mayor Lisa Helps and Members of Council,

It has been six months since an inspection of my premises was carried out for the purposes of being eligible for a short-term rental business licence.

The Short-Term Business Licence requirements are in direct conflict with the City of Victoria Building and Zoning bylaws. A “self-contained” unit is a prohibited use in a half-duplex. The owners met all the requirements while renovating this space to ensure they were compliant (as documented in the appeal notes).

I am being denied a short-term rental business licence because the inspector has determined this space to be a “self-contained” unit.

I respectfully request that all members of council review all materials in regard to this appeal, rather than make a decision based solely on the inspectors’ findings. The appeal case that I have submitted addresses the conflicts that exist in the City of Victoria by-laws and building requirements.

I would also like to draw council’s attention to the fact all short-term advertising was changed to 30+ days in late June, 2021. Since that date, I have had interest in utilizing this space, but visitors are refusing to rent due to the lack of cooking facilities.

This space does not lend itself to long-term rentals, rather it is attractive to people who come to Victoria on a short-term basis.

In closing, I request that council consider that this space be non-conforming and that 1132 Chapman Street be grandfathered for the purposes of obtaining a short-term business licence.

Regards,

Roberta Prilusky

APPELLANTS FINAL RESPONSE TO LICENCE INSPECTORS SUBMISSION

Business Licence (Short-term Rental) Appeal re 1132 Chapman Street Submission of the Licence Inspector

I. Introduction

1. This is an appeal from the decision of the Licence Inspector to refuse to issue a business licence to Roberta Prilusky for the operation of a short-term rental at 1132 Chapman Street.

2. The business licence was denied pursuant to section 4(b) of the *Short-term Rental Regulation Bylaw*, which states:

3. The Licence Inspector may refuse to issue a licence for a short-term rental if, in the opinion of the Licence Inspector,

...

(b) the short-term rental operation would contravene a City bylaw or another enactment.

3. The appeal is brought pursuant to section 60(5) of the *Community Charter*, which requires that an applicant for a business licence has the right to have a staff decision to refuse such licence reconsidered by Council.

On a reconsideration such as this, Council can apply its own judgment and may either uphold the decision to refuse the licence or grant the licence.

Facts

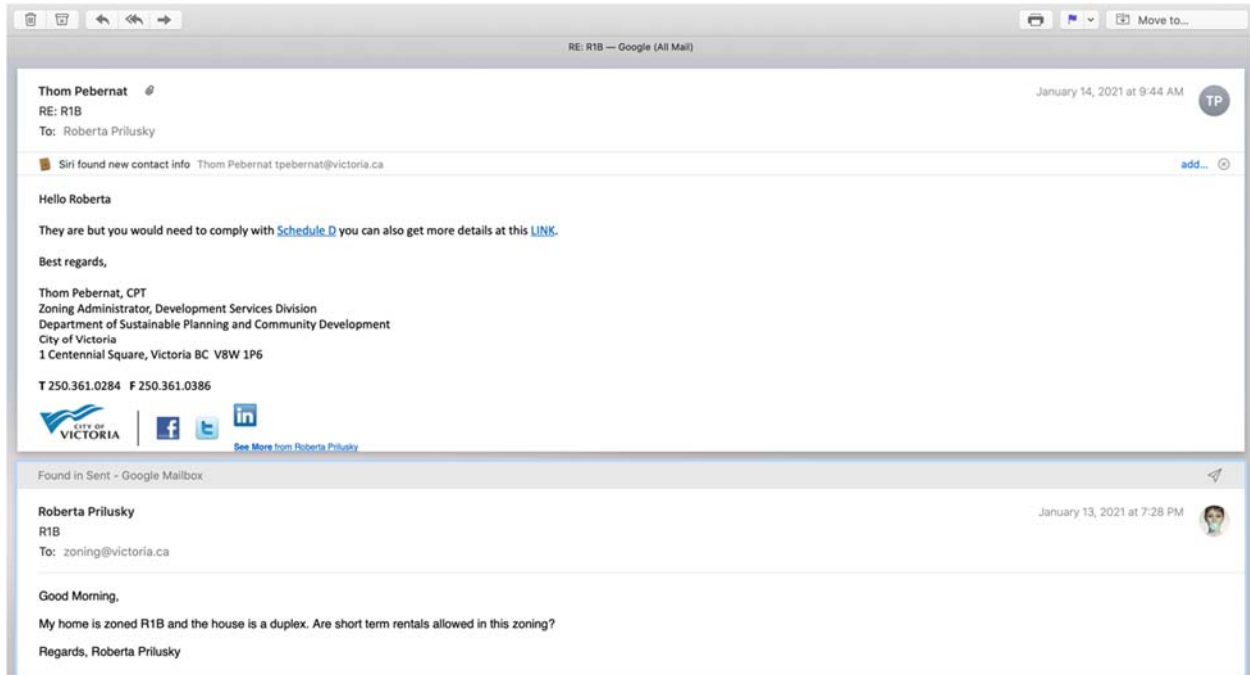
1. The appellant rents the upper units at 1132 Chapman Street. The property is a duplex zoned R1-B. Short-term rentals are not a permitted use under this zone. The lower unit of the duplex has a long term tenant.

- The property is zoned as a duplex R1-B. Short term rentals are permitted under this zone.

Confirmation E-MAIL From Thom Pebernat, CPT, Zoning Administrator, Development Services Division, City of Victoria. (See Below).

- The lower unit (1/2 duplex) is rented as a long-term rental. The upstairs unit (1/2 duplex) is rented by myself, Roberta Prilusky.
- According to the Short-Term rental regulations and Schedule D – Home Occupations short-term rentals is permitted at 1132 Chapman Street.

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2. The owner of the property has created a self-contained one-bedroom unit on the third floor. [See attached photos]

The third floor is unsuitable as a long-term rental unit due to the lack of required “kitchen” facilities. (Reference to appeal case submitted – *Building inspectors ordered the removal of wiring and electrical for a stove during renovations, stating that legally it is not and cannot be a self-contained suite.*)

3. The third-floor unit consists of a living room, a bedroom, a separate bathroom and a kitchen. It has a separate entrance from outside on the second floor. There is a locking door between the second-floor entrance, and the unit on the second floor with is occupied by the appellant (i.e., the units occupants have no access to the rest of the house). The appellant, who resides on the second floor, exclusively uses the rear entrance to access her unit.

The tenant makes use of both entrances, which-ever is convenient. There is no locking door for the second-floor entrance, however there is a door to the area occupied by the appellant which as the ability to be locked, but it remains open for short-term renters should they need the kitchen.

4. The kitchen includes counters with sink, a full fridge, a microwave, a toaster oven, hot plates, a dishwasher, and a kettle and coffee maker. [See attached photos]
5. The third-floor unit on the property has been rented as a short-term rental since at least September 2014. In 2019, the operator had accepted over 35 short-term rental bookings.

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Attached is a report from Host Compliance detailing information about the short-term rental activity at the property.

This location is very desirable to tourists visiting Victoria on a short-term rental. Since July of 2020 when we were only allowed to rent this space on a 30 day basis, we have no rentals and the unit remains empty except for family visiting. ****This adds weight to our request to consider allowing me a licence).**

6. The previous property manager and tenant of the second-floor unit applied for and received a business licence to operate a short-term rental in 2019. The licence was granted on the basis of the applicant's representation that the short-term rental was offered in the applicant's principal residence.
7. An inspection of the premises on June 17th, 2020 revealed that the third-floor unit is operating as a self-contained dwelling and is not part of the appellant's principal residence.

Disagree. The second and third floor comprise one unit. These floors cannot be legally separated and designating this space as a "self-contained unit" would put the owner in direct violation of zoning and building by-laws which apply to this property.

8. On June 17th, 2020, the Licence Inspector advised the appellant that her application for a short-term rental licence has been refused because short-term rental of a self-contained dwelling did not comply with applicable zoning.

Incorrect. Applicable zoning is R1B. Short term rentals are allowed in this zone (see above email confirmation). Further the space conforms to what is required for a short-term rental.

III. Relevant Regulations

9. The City regulates short-term rentals through the *Short-term Rental Regulation Bylaw* and through provisions of the zoning bylaws. In relation to the property, the relevant zoning bylaw is the *Zoning Regulation Bylaw*, which states, in part:

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(4) Without limiting the generality of subsection (1), short-term rentals, whether as a principal or accessory use, are prohibited in all zones except

1. *(a) where they are expressly permitted subject to regulation applicable in those zones;*
2. *(b) rental of no more than two bedrooms in a self-contained dwelling unit, as home occupation, provided that:*
 1. *(i) the self-contained dwelling unit is occupied by the operator of the short-term rental;*
and

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2. (ii) *short-term rental complies with all regulations in Schedule*

D as if it were a transient accommodation.

1132 Chapman Street is Zoned R1B. This zoning allows short term rentals.

As the appellant of this ½ duplex, I am renting one upstairs bedroom and space of her self-contained unit.

I am complying with all regulations in Schedule D in regard to short-term rentals, and further the owners are complying with all zoning, building bylaws of the City of Victoria.

10. A self-contained dwelling unit is defined in the *Zoning Regulation Bylaw* as “a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.” A kitchen is not defined in the bylaw. However, the Oxford English Dictionary defines “kitchen” as “a room where food is prepared and cooked”.

This definition of kitchen is inappropriately broad and subject to incorrect regulatory interpretation. As previously stated, the stove/oven/wiring was purposely removed to conform to the property’s designation of a “duplex” and not a triplex. The space upstairs cannot be designated as a “self-contained” dwelling unit. The unit does not meet the requirements for the definition of a “kitchen”.

IV. Argument

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11. When short-term regulations were initially introduced, the City was flooded with applications of business licences. In an effort to encourage compliance with regulations, these applications were processed very quickly and were not always fully screened. More careful reviews and inspections have been conducted as part of 2020 application process. Therefore, the fact that the previous tenant was issued a short-term rental business licence in 2019 is not an indication that a 2020 licence should also be issued.
17. Although the appellant resides in the house at 1132 Chapman Street, the premises that are rented as a short-term rental are not part of her principal residence, because the third-floor unit is being offered and advertised as an independent self-contained dwelling unit. The appellant advertises the unit as ‘third floor loft suite’ on Airbnb. [Matched Airbnb Property Listing Attached] .
18. It is clear that the third-floor unit at 1132 Chapman Street is being offered as a self-contained dwelling unit: it has its own entrance from outside, a kitchenette with space to prepare and cook food (i.e., “kitchen”), and separate bathroom – it meets the requirements of the definition of “self-contained dwelling unit” in the *Zoning Regulation Bylaw*.

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This space is not a self-contained dwelling unit that has its own entrance. The space does not have a proper kitchen to prepare food. This space does not meet the requirement of a “self-contained dwelling unit” in zoning regulation bylaws. This space is only suitable for short term rentals and has been decorated and made comfortable to accommodate short term visitors to Victoria, as well as visiting family.

19. The appellant appears to rely on the absence of a stove; however, the unit has been prepared to operate independently as a self-contained suite, and not as two bedrooms in her principal dwelling unit, as required by Schedule D of the *Zoning Regulation Bylaw*.

The City of Victoria Inspectors required the removal of the stove/wiring to ensure this floor would not be used as a self-contained dwelling unit.

Since the denial of the licence in January, the appellant continues to offer the suite for rent on a 30 night minimum basis, which further demonstrates the unit’s ability to operate as a long-term rental (30 + nights per stay).

The denial of a licence was received following the inspection in June. All reservations for the short-term rental were cancelled from that point forward. Since June, I have been unable to secure a 30+ night rental stay.

This space does not allow or accommodate for persons wishing to stay for 30 days+.

20. For all these reasons, the Licence Inspector submits that the appellant’s application for a short-term rental business licence had to be refused as it contravened the *Zoning Regulation Bylaw*.
21. One of the objectives of the City’s regulations of the short-term rentals was to address the problem of self-contained dwelling units being diverted from the housing market to a vacation rental market. This is the rationale behind the provisions of the zoning bylaw which limit short-term rentals to bedrooms within self-contained units rather than entire self-contained units.

This space is not being diverted from the housing market to the rental market. This space does not provide the comfort nor the functioning ability one would find in a self-contained unit. It was never intended to be a self-contained suite for the housing market.

Zoning bylaws and building bylaws prevent a legal self-contained dwelling unit therefore, we respectfully request that this space be “grand-fathered” and allowed to licence as a short-term rental.

22. The property at 1132 Chapman Street is an example of a self-contained dwelling unit that has been lost to the regular housing market in the past, contrary to the intent behind City regulations, which prohibit rental of entire self-contained dwelling units as short-term rentals.

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The space in question (third floor at 1132 Chapman Street) is not only unsuitable for a long term rental, but zoning and building bylaws prohibit this space to be a self-contained dwelling unit. The third floor does not meet the zoning requirements to be consider a triplex. Since June of 2021, I have been unable to rent this space as a 30+ day rental.

Denying the short-term licence for 1132 Chapman Street will not achieve the objectives intended by the City of Victoria. Denial of a short term licence will restrict availability of comfortable short term stays for visitors to Victoria.

This space was never intended to be a self contained unit for the purposes of rental in the City housing market.

We respectfully request that the denial of this licence be over-turned and a short-term licence be granted to operate.

Therefore, the Licence Inspector submits that this appeal should be dismissed and the decision to refuse a short-term rental business licence for 1132 Chapman Street upheld.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: January 12,2021

Shannon Perkins, Manager of Bylaw Services