



CITY OF SOMERVILLE, MASSACHUSETTS  
*MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT*  
JOSEPH A. CURTATONE  
MAYOR

GEORGE J. PROAKIS  
EXECUTIVE DIRECTOR

**PLANNING DIVISION STAFF**

SARAH LEWIS, *DIRECTOR OF PLANNING*  
SARAH WHITE, *PLANNER & PRESERVATION PLANNER*  
ALEX MELLO, *PLANNER*  
MONIQUE BALDWIN, *ADMINISTRATIVE ASSISTANT*

**Case #:** ZBA 2018-165

**Date:** January 9, 2019

**Recommendation:**

Deny Administrative Appeal & Uphold ISD Decision

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**ZBA STAFF REPORT**

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**Site:** 123 Packard Avenue

**Applicant Name:** Kappa Charge of the Theta Delta Chi Fraternity through their attorney, Richard L. Walsh, III, Clerk of Corporation

**Agent Name:** Attorney Richard L. Walsh, III, Clerk of Corporation (representing the Kappa Charge of the Theta Delta Chi Fraternity)

**Agent Address:** 6310 Post Road, North Kingston, RI 02852

**Alderman:** Lance Davis



**Legal Notice:** Applicant, Kappa Charge of the Theta Delta Chi Fraternity, through their attorney, Richard L. Walsh III, Clerk of Corporation, seeks an Administrative Appeal per SZO §3.1.9, §3.2, and §3.2.3 of the Inspectional Services Department's (ISD) determination that, due to the fraternity's charter being revoked by Tufts University, the fraternity has no affiliation with said University and, therefore, is operating without any established permitted use under the SZO. §7.11.3.b. UN zone. Ward 6.

**Dates of Public Hearing:** January 9, 2019 – ZBA

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## **I. GROUNDS FOR APPEAL**

Kappa Charge of the Theta Delta Chi Fraternity (hereafter referred to as “the Appellant”), through their attorney, Richard L. Walsh, III, Clerk of Corporation, is the owner of the property located at 123 Packard Avenue. 123 Packard Avenue is the subject of the Administrative Appeal.

A violation notice issued by the Inspectional Services Department (ISD) dated September 28, 2018 was received by the Kappa Charge of the Theta Delta Chi Fraternity of Tufts University through one of their agents (violation notice attached, ISD file #18-018185). The notice outlined several violations at the property. The specific violation that is the subject of the Administrative Appeal and as outlined in the violation notice by ISD is as follows:

### **SZO Table of permitted Uses Sec. 7.11.3.b**

- 1) A fraternity use is permitted as of right by the Somerville Zoning Ordinance in the UN district where the property is located. The property has historically operated under this allowed use as a Tufts University recognized fraternity as the Theta Delta Chi fraternity. It has come to our attention that Tufts University has revoked its charter with Theta Delta Chi and Tufts University no longer recognizes Theta Delta Chi as a fraternity. Due to this loss in affiliation with its educational institution, the property no longer qualifies as a fraternity for purposes of the Somerville Zoning Ordinance. The property has no established permitted use by the Somerville Zoning Ordinance.**

The Appellant contends that they are legally able to use the premises as a fraternity due to the following:

- The Appellant possesses a lodging house license
- The use of the property has been the same since 1930 and has not changed
- Tufts University as an abutting land owner, does not have the ability or legal standing to determine the use of 123 Packard Avenue
- The use of the property as a fraternity is a legal, non-conforming use
- The fraternity’s corporate charter is current with the Commonwealth of Massachusetts

The Appellant’s allegations and related sub-claims are discussed below. Staff responses to each of these arguments are addressed in **red text** following the Appellant’s arguments.

## **II. BACKGROUND**

### **Subject Property**

The locus presents a 2.8-story, ~6,916 square-foot Classical Revival structure built circa 1900. The residential structure resides on a ~10,019 square foot lot in the UN (University) zoning district. The subject property is located on a corner lot at the intersection of Packard Avenue and Talbot Avenue.

### **History**

It came to the attention of the Inspectional Services Department (ISD) in 2018 that the fraternity owning the property located at 123 Packard Avenue, Kappa Charge of the Theta Delta Chi Fraternity, lost their charter with Tufts University and is no longer affiliated with the school.



Research on the part of Planning Staff confirms that, in fact, Kappa Charge, the Tufts chapter of the Theta Delta Chi Fraternity, has lost its university affiliation. This is confirmed on the Tufts University website (<https://students.tufts.edu/student-affairs/residential-life/campus-housing/fraternity-and-sorority-life/organization-status>):

Organization	Status	Participation in Fall Recruitment 2018	Recent Disciplinary History
Theta Delta Chi	Revocation of Recognition; not eligible to petition to return before 2027	No	Found responsible for hazing, alcohol policy violations, Code of Conduct violations, and sexual harassment in October 2017 via a hearing before the Committee on Student Life. These findings of responsibility resulted in revocation of the organization's recognition and a requirement that the fraternity may not petition for return before 2027. Specific students currently residing in the chapter house are authorized to reside in the chapter house until May 2018 provided that they meet certain social and safety restrictions.

By their very nature, Greek letter organizations are fraternities and sororities which serve as social organizations at colleges and universities. Tufts university has numerous such Greek letter organizations, most of which are in good standing with the school (see link provided above). By having had their recognition as a Tufts University fraternity revoked by the school itself, Kappa Charge has lost its ability to use the property as a fraternity house.

Without the recognition of the University, the property at 123 Packard has fallen into the category of a boarding house/lodging house. According to the Appellant's own statement submitted for this Administrative Appeal (attached to this staff report), the property currently houses eighteen (18) individuals. Under SZO Section 7.11.3.a, this constitutes a "Boarding house/single room occupancy (SRO) building". Under this section of the SZO, such a building housing 6 persons or more in the UN zone is not allowed under any circumstances – not via a special permit nor a variance. It is categorically prohibited. Further, the UN (university) district is not an overlay district; there is no underlying zoning district whose regulatory provisions would supersede those of the UN itself. The portion of the SZO Table of Permitted Uses showing Section 7.11.3.a below illustrates the fact that the boarding house use into which this property now falls is prohibited:

S CITY ... / ARTICLE 7. - PERMITTED USES / Section 7.11. - Table of Perm...

SHOW CHANGES Q MORE

(unless specified otherwise)	RA	RB	RC	NB	CBD	BA	BB	IA	IB (18)*	IP	OS	UN	ASMD	PUD-B PUD-B1	ACD
a. Boarding house/single room occupancy (SRO) building															††
up to 5 persons	SP	SP	SP	SP	SP	SP	SP	-	-	-	-	SP	SPSR-A	SPSR	††
6 or more persons	-	-	SP	SP	SP	SP	SP	-	-	-	-	-	SPSR-A	SPSR	††

### III. Analysis of the Appeal

OSPCD staff has reviewed:

1. the Administrative Appeal application and related documents from the Appellants
2. ISD violation letter and associated files for 123 Packard Avenue
3. Tufts University information related to Kappa Charge losing their affiliation with Tufts

In their appeal, the Appellant has put forth five (5) main arguments, previously bullet-pointed earlier in this staff report. These arguments are briefly discussed below as they appear in the Appellant's original statement. Staff responses to the Appellant's claims are addressed in **red text** within the body of the Appellant's allegations. Where Appellant claims are repetitious, Staff will only address them in detail once. The original copy of the Appellant's statements and the ISD violation notice are attached to this report for reference.

#### 1 – The Appellants allege that:

The appellant is a fraternity and chartered by the Commonwealth of Massachusetts as a non-profit corporation. The corporation was chartered in 1883 and is currently in good standing.

**Staff Response:** A fraternity being chartered as a non-profit corporation by the Commonwealth of Massachusetts is a different matter than being a recognized fraternity associated with a university. The Appellant confuses the issue of MA chartering with University recognition. By the Appellant's logic, chapters of this Greek life organization, a should be able to exist anywhere in the Commonwealth without being tied to a university. As described earlier, by its very nature, a fraternity or sorority, as Greek life organizations, are recognized by the colleges and universities with which they have identified. Tufts University has withdrawn this recognition, therefore, the Kappa Charge chapter of this fraternity no longer exists in the eyes of the university and of the City.



**2 – The Appellants allege that:**

The appellant has been operating as a fraternity at 123 Packard Avenue since 1930, and renting out rooms to Tufts undergraduate students at the property address since 1930. The property is a legal non-conforming use as a fraternity with a lodging license.

**Staff Response:** When the fraternity was recognized as a chapter in good standing with the university, the fraternity had a legally conforming use at 123 Packard Avenue as part of the University district (UN). However, once again the Appellant confuses two issues: that of possessing a lodging license versus possessing a legal, conforming use of the property. A lodging license issued by the Somerville licensing board or a state commission is an entirely separate matter from conforming to zoning code.

Licensing boards and commissions do not concern themselves with zoning regulations; their job is to issue or deny licenses based on whether an organization fits licensing criteria, not zoning criteria. For example, someone could possess a license from the licensing commission to operate a fat rendering plant. The person possessing such a license could own a property in the UN district. However, simply because a person possesses a license and owns a piece of property does not mean that that license can be put to use at that property. If a particular use is not allowed in the zoning district in which that person wants to exercise their license, that particular license cannot be exercised there. In terms of this example, fat rendering plants are not allowed in the UN district, therefore, a person possessing such a license could not exercise it at a property they own in the UN district.

The same logic applies to the inability of the Appellant to exercise their lodging license at 123 Packard Avenue. The use is not allowed. To underscore this point and as seen in the Use Table, a boarding or lodging house of more than 6 people is NOT an allowed use in the UN district.

**3 – The Appellants allege that:**

The appellant's use of the property has not changed. Tufts University, an abutting land owner, does not have the ability, nor the legal standing, to determine the use of the appellant's property. The appellant continues to be a legal non-conforming use with the right to use the property as a fraternity with a lodging license.

**Staff Response:** Staff refers the ZBA to the discussion of lodging licenses versus zoning regulations above. Further, Tufts University is not the driver of this action against the Kappa Charge fraternity. It was the City of Somerville, once it became aware of the situation involving the fraternity's revoked recognition as a legally-affiliated fraternity with the University, that ISD was compelled to take enforcement action. Once again, as this organization's status as a fraternity is no longer valid, they are illegally operating as a lodging house in the UN zone.

## **IV. RECOMMENDATION**

- Staff finds that the allegations put forth by the Appellant do not constitute a basis for overturning the ISD determination that the property at 123 Packard Avenue can no longer be used as a fraternity house due to the Chapter's loss of status with Tufts University as a recognized fraternal organization of the school.
- Planning staff recommends that the ZBA DENY the Appellant's administrative appeal and UPHOLD the ISD decision.



**CITY OF SOMERVILLE  
INSPECTIONAL SERVICES - BUILDING DIVISION**

1 Franey Road Somerville, MA 02145  
(617) 625-6600 Ext. 5600

**VIOLATION NOTICE**

KAPPA CHARGE OF THE THETA DELTA CHI FRATERNITY  
C/O SANDI MINTZ  
100 WOODVIEW WAY UNIT # 1111  
ANDOVER, MA 01810

Date: September 28, 2018  
Subject: Violations  
Site Address: 123 PACKARD AVE  
File #: 18-018185

To Whom It May Concern:

On 09/26/2018, acting under the authority of Massachusetts General Laws Chapter 143 section 3A and Chapter 1 of the Massachusetts State Building Code, the Somerville Zoning Ordinance, and/or the Somerville Code of Ordinances, the Building Inspector has caused an inspection to be conducted at 123 PACKARD AVE.

According to the records of the Southern Middlesex Registry of Deeds, this property is owned by you.

The Inspection revealed the following violation(s) of the International Building Code (IBC), International Residential Code (IRC), State Building Code (780 CMR), Somerville Zoning Ordinance (SZO), and/or Somerville Code of Ordinances (SCO):

**SZO Table of Permitted Uses Sec. 7.11.3.b**

1) A FRATERNITY USE IS PERMITTED AS OF RIGHT BY THE SOMERVILLE ZONING ORDINANCE IN THE UN DISTRICT WHERE THE PROPERTY IS LOCATED. THE PROPERTY HAS HISTORICALLY OPERATED UNDER THIS ALLOWED USE AS A TUFTS UNIVERSITY RECOGNIZED FRATERNITY AS THE THETA DELTA CHI FRATERNITY. IT HAS COME TO OUR ATTENTION THAT TUFTS UNIVERSITY HAS REVOKED ITS CHARTER WITH THETA DELTA CHI AND TUFTS UNIVERSITY NO LONGER RECOGNIZES THETA DELTA CHI AS A FRATERNITY. DUE TO THIS LOSS IN AFFILIATION WITH ITS EDUCATIONAL INSTITUTION, THE PROPERTY NO LONGER QUALIFIES AS A FRATERNITY FOR PURPOSES OF THE SOMERVILLE ZONING ORDINANCE. THE PROPERTY HAS NO ESTABLISHED PERMITTED USE BY THE SOMERVILLE ZONING ORDINANCE.

**780 CMR 111.1 Use and Occupancy.** No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the building commissioner, inspector of buildings, or when applicable, the state inspector, has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of 780 CMR or of other laws or ordinances. Conformance to all applicable specialized codes of M.G.L. c. 143, § 96, and submittal of a certificate of compliance for Title V, if applicable in accordance with 310 CMR 15.00, are requirements of the issuance of the certificate of use and occupancy.

1) A CERTIFICATE OF OCCUPANCY MUST BE APPLIED FOR AND OBTAINED TO ESTABLISH THE USE FOR THE BUILDING.

**780 CMR 1001.3.2 Testing and Certification.** All exterior bridges, steel or wooden stairways, fire escapes and egress balconies shall be examined and/or tested, and certified for structural adequacy and safety every five years, by a registered design professional, or others qualified and acceptable to the building official; said professional or others shall then submit an affidavit to the building official.

1) PROVIDE A STRUCTURAL AFFIDAVIT FROM A REGISTERED DESIGN PROFESSIONAL ATTESTING TO THE STRUCTURAL ADEQUACY OF THE EGRESS BALCONIES. ANY DEFICIENCIES SHALL BE CORRECTED.

**780 CMR 110.7 Periodic Inspections.** The building official shall inspect periodically existing buildings and structures and parts thereof in accordance with Table 110 entitled Schedule for Periodic Inspections of Existing Buildings. Such buildings shall not be occupied or continue to be occupied without a valid certificate of inspection. Periodic inspections required by this section do not apply to residences operated or licensed by the Massachusetts Department of Developmental Services and subject to 780 CMR 51.00: Massachusetts Residential Code.

1) OCCUPYING BUILDING WITHOUT A CERTIFICATE OF INSPECTION. LATEST CERTIFICATE OF INSPECTION EXPIRED ON 8/29/18.

You are hereby ordered to abate these violations immediately. You must obtain any applicable permits prior to performing any work. The Building Inspector will re-inspect as needed.

If you fail to comply with this violation notice, the Building Inspector may invoke the following procedures to compel you to correct the violations: 1) the issuance of tickets for each day the violation continues to exist; 2) an application for criminal complaint; 3) a complaint for injunction from a Court of competent jurisdiction; and/or 4) any other remedy allowed by law.

If you are aggrieved by this Order relative to the State Building Code, you have the right to appeal within 45 days to the State Building Code Appeals Board pursuant to Massachusetts General Laws Chapter 143, Section 100.

If you are aggrieved by this Order relative to the Somerville Zoning Ordinance, you have the right to appeal within 30 days to the Zoning Board of Appeals pursuant to Somerville Zoning Ordinance, Section 3.1.9 and 3.2.3.

With respect to zoning violations, Somerville Zoning Ordinance, Section 3.1.8 provides that any person who violates any provision of this Ordinance or who fails to perform any act required hereunder or does any prohibited act, shall upon conviction thereof, be punished by a fine of not more than \$500 for each offense and every day that a violation continues to exist shall constitute a separate offense and shall be punishable thereas.

With respect to the State Building Code, General Laws Chapter 143, Section 94(a) provides that “[w]hoever violates any provision of the state building code ... shall be punishable by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both, for each such violation. Each day that a violation exists shall constitute a separate offense.”

Please feel free to contact me at 617-625-6600 x5609 to discuss this matter.

Respectfully,



**Luis Waldron**  
**Local Building Inspector**  
**617-625-6600 x5609**



**Attachment to Application for Planning Board  
and Zoning Board of Appeals Approval**

**Reason for Appeal.**

The appellant is a fraternity and chartered by the Commonwealth of Massachusetts as a non-profit corporation. The corporation was chartered in 1983 and is currently in good standing.

The appellant has been operating as a fraternity at 123 Packard Avenue since 1930, and renting out rooms to Tufts undergraduate students at the property address since 1930. The property is a legal non-conforming use as a fraternity with a lodging license.

The appellant's use of the property has not changed. Tufts University, an abutting land owner, does not have the ability, nor the legal standing, to determine the use of the appellant's property. The appellant continues to be a legal non-conforming use with the right to use the property as a fraternity with a lodging license.





William Francis Galvin  
Secretary of the  
Commonwealth

*The Commonwealth of Massachusetts*  
*Secretary of the Commonwealth*  
*State House, Boston, Massachusetts 02133*

Date: September 24, 2018

To Whom It May Concern :

I hereby certify that according to the records of this office,

**KAPPA CHARGE OF THE THETA DELTA CHI FRATERNITY**

is a domestic corporation organized on November 24, 1883

I further certify that there are no proceedings presently pending under the Massachusetts General Laws Chapter 180 section 26 A, for revocation of the charter of said corporation; that the State Secretary has not received notice of dissolution of the corporation pursuant to Massachusetts General Laws, Chapter 180, Section 11, 11A, or 11B; that said corporation has filed all annual reports, and paid all fees with respect to such reports, and so far as appears of record said corporation has legal existence and is in good standing with this office.



In testimony of which,  
I have heretanto affixed the  
Great Seal of the Commonwealth  
on the date first above written.

*William Francis Galvin*

Secretary of the Commonwealth