

Burlington Development Review Board

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Austin Hart
Michael Long
Jonathan Stevens
Brad Rabinowitz
Bob Schwartz
Kevin Stapleton
Jim Drummond
Oscar Hernandez (Alt.)
Alexandra Zipparo (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, January 15, 2013 - 5:00 p.m., Contois Auditorium, City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (Chair), Jonathan Stevens (Vice Chair), Michael Long, Brad Rabinowitz, Bob Schwartz, Kevin Stapleton, Oscar Hernandez (Alt.), Alexandra Zipparo (Alt.)

Staff: Ken Lerner, Nic Anderson

Absent: Jim Drummond, Scott Gustin, Mary O'Neil

I. **Agenda**

97 Overlake Parkway withdrawn by applicant. Appeal is moot. Will not be heard. Will have deliberative session after public hearing for 51-53 Main St.

II. **Communications**

None.

III. **Minutes**

Two sets in packet for board review and approval.

IV. **Public Hearing**

1. **13-0623AP: 231 South Prospect Street (RI, Ward 6) Timberlake Associates, LLP**
Appeal of Notice of Violation for driveway width and use.

Appellants Dave, Jeff and Jamie Simendinger present.

J. Francis – Code Enforcement asked Board if they would be addressing the timely filing of appeal matter first.

A. Hart - Yes. Public sworn in.

D. Simendinger handed out paperwork. Noted brother is 50% owner and typically deals with these matters. Brother was hospitalized at the time of the Notice of Violation (NOV) was issued by Code Enforcement. Had no idea of law suit from Code. Tenants were parking on the grass, not owners.

A. Hart - Read portion of staff comments regarding dates. Asked if A. Sawyer (who signed Certified Mail receipt) was employee.

D. Simendinger - Yes.

A. Hart noted timeframes for appeal. Cannot ignore dates. Reluctant to accept that person who was responsible was not available.

D. Simendinger - Violation has been resolved. Persons who parked have been punished.

A. Hart noted months delay.

D. Simendinger - Can supply information about brothers hospitalization. Feels they were not treated fairly. Brother filed appeal immediately after getting out of hospital.

B. Rabinowitz asked about how business continued while brother was hospitalized and what processes were in place to manage without him. Must have been able to take care of business while he was unavailable.

D. Simendinger - Have been working with Scott Gustin. Allegations are not founded. Property the same as 2011. Have lease that states cars are not allowed to be parked on the grass. Installing barriers doesn't seem like the solution.

B. Rabinowitz - Measures are currently being taken to reduce impacts of parking on grass.

D. Simendinger - Have had meetings with Zoning staff and not heard about issues.
 J. Stevens - Appeal periods are fixed by law and there is no flexibility based on good faith. Reluctant to proceed. May ask for information from City Attorney.

B. Ward and J. Francis from Code Enforcement.

B. Ward - Agree with deadlines and were not communicated with. Required to enforce regulations. Noted dates. Not a timely appeal in his opinion.

J. Francis noted that both first class mail and certified letter were sent at same time. Received certified mail notice back. Appellant did not contact Code Enforcement to discuss. Date for filing appeal has been missed.

D. Simendinger - When letter was received, did go straight to Planning and Zoning thinking that would remedy. Doesn't understand how different departments relate. Thinks that going to Planning and Zoning was a remedy.

K. Stapleton asked if Planning and Zoning was visited before that date.

K. Lerner noted bullet point in staff comments for October 3, 2012. Denied due to lot coverage increase.

D. Simendinger - Detailed permitting applications. Around same timeframe. Detailed history of discussions with Planning and Zoning Staff. Denied because of coverage. Widening of driveway on Maple St driveway has been approved.

J. Stevens noted that this does not relate to appeal being timely filed.

D. Simendinger noted application was made in August and was being worked on.

B. Rabinowitz asked DRB that if permit was in process, was it the appeal that was needed to stay NOV?

A. Hart noted dates. Board should make decision now on preliminary issue of timeliness. Asked board if comfortable with that.

B. Rabinowitz - Would like to have feedback from City Attorney. Asked about different applications versus NOV happening concurrently. Asked if paying fee on permit has any bearing on paying a fee for an appeal.

K. Sturtevant – City Attorney. Two distinct applications have distinct fees for each one.

J. Stevens noted dumpster was in NOV but not in permit so don't fully overlap and seems like filing of permit did not address appeal of NOV. If application doesn't get approved then the violation still exists.

A. Hart - Believes this still doesn't absolve the requirement of appeal. Appellant has owned multiple properties so should be aware of process. Not unreasonable to ask them to read notices and respond. Dangerous precedent to set if we allow this appeal.

B. Rabinowitz asked who gets sent the copy of the Notice of Violation. Does a copy get to Land Records and Planning and Zoning.

N. Anderson – Yes, both.

K. Lerner noted previous permits.

Motion by J. Stevens to deny appeal on basis that appeal was not timely.

Seconded by M. Long.

Vote: For 7-0 against.

Motion Carried.

2. 13-0529FC: 97 Overlake Parkway (RL, Ward 6) Owner: Anya & Jeffery Byam, Appellant: Michael Huffman et al.

Appeal of administrative approval for installation of wooden fence with associated gates.

97 Overlake Parkway withdrawn by applicant. Appeal is moot. Will not be heard.

V. Other Business

VI. Adjournment

Adjourned at 5.34pm.

Deliberation held immediately for 51-53 Main St.

A. Hart - Chair, Development Review Board

Date

Nic Anderson, Zoning Clerk