

October 16, 2011

To: Burlington Development and Review Board

From: Chris Cole, Owner 384 North Street

Re: Bierman Testimony

Appeal Issues

Mr. Bierman's written testimony doesn't address the three issues surrounding his and Caryn Long's appeal of the Code enforcement and DRB staff decisions of 2006 and 2008 discussed at the DRB hearing, namely the issues of the timeliness of appeal, standing and statute of limitations.

The Code Enforcement office and the DRB staff did not make a decision in 2011 regarding the complaint Mr. Bierman and Ms. Long lodged. They merely reaffirmed earlier decisions made by both Code Enforcement and Ken Lerner of the DRB. The complainants are attempting to appeal decisions made in 2006 by Code Enforcement and then reaffirmed by the DRB in 2008, for an appeal to be timely it would have needed to be made within fifteen days from the date of the decision. As a matter of law, the DRB is unable to review this appeal based upon its untimeliness.

Mr. Bierman indicates that he lives several blocks from 384 North Street, as I indicated at the DRB hearing, in order for Mr. Bierman to have standing for an appeal, he needs to *own or occupy property in the immediate neighborhood...who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed*. Mr. Bierman has not met this test. His residence at 86 Brooke Street is not in the immediate neighborhood, it is in the extended neighborhood, but not in the immediate neighborhood. Section 12.2.1(d) does offer Mr. Bierman an opportunity to appeal a decision and there is no immediate neighborhood standard but it requires getting the signatures of ten property owners within the city. Mr. Bierman failed the test to meet standing for an appeal since he is trying to lodge an appeal under 12.2.1(c).

Mr. Bierman argues that the parking space doesn't meet the 15 year continuous use requirement since he alleges the space has only been in use since 2002. Mr. Bierman acknowledges he has been monitoring the property since 2002 but not prior to 2002. Mr. Bierman erroneously concludes that the space hasn't been in continuous use for 15 years. The Code enforcement staff and the DRB staff both reached a different conclusion than Mr. Bierman, both in 2006 and in 2008. Mr. Bill Wessel who we purchased the property from in 2004, signed an affidavit acknowledging that the space in question, the one adjacent to the driveway, had been in continuous use since he purchased the property in 1970 and sold it to us in 2004. We supplied photographs taken in 1988 to both Code enforcement and the DRB that documented the space adjacent to the driveway had in fact been used as a parking space. There were additional photographs prior to 1988, while not showing a car in this space did however show the bare earth made by repeated use by auto tires of parking in this location. Both the 1988 photo plus others that were submitted show the parking spot had been in use prior to the 2002 dates the Mr. Bierman alleges. The photographs coupled with the affidavit are sufficient evidence of continuous use and has been the standard for both Code Enforcement and the DRB to make such decisions in the City of Burlington.

The photographs that Mr. Bierman has provided prove nothing to substantiate his claims but they do substantiate our claims. One is an aerial photo circa 2003-2007 that shows no cars at all parking in the driveway or adjacent to the driveway on a particular day at a particular time. This does not in and of itself prove that a car does not park there regularly unless you look closely at the shading of the lawn. The lawn is clearly a different color than the parking area that is adjacent to the driveway. The parking area, about the size of a car, is directly in front of the door and is clearly a lighter shade than the rest of the lawn.

The other photo of a car parked on the lawn of 384 North Street is illegally parked on the lawn and not in the parking spot adjacent to the driveway. When code enforcement brought this to our attention we informed the tenants that they were not allowed to park there and we haven't had issues since that time. If Mr. Bierman had taken the photo from the other direction, one would have been clearly able to see the parking space adjacent to the driveway next to this vehicle. This lawn parking is not the subject of this appeal as both Mr. and Ms. Long testified at the hearing, they are appealing the decision of both Code Enforcement and the DRB staff that the parking spot adjacent to the driveway is unenforceable.

I still take the position that neither Mr. Bierman or the Long's have satisfied the statute for a timely appeal, that neither party has standing and there has been no proof offered to counter the decision of the Code Enforcement and DRB staff back in 2005, 2006 and again in 2008 that denies the spot adjacent to the driveway wasn't in continuous use as out affidavit and photographs clearly demonstrate such use.

In addition, I contacted the former owner of the property, Bill Wessel, who owned the property from 1970 to 2004 and asked him how the parking adjacent to the driveway came to be an established practice. He indicated that there used to be a garage at the property at the end of the driveway next to the house and he rented the building so that the upstairs two-bedroom apartment had the use of the garage (and the one-lane driveway) and the downstairs apartment had a space to the left of the driveway. In this way both units could come and go without disturbing the other. At some point over the years Bill indicated that the garage was taken down and the parking in the driveway (upstairs apartment) and to the left of the driveway (downstairs apartment) continued.

I respectfully request that the DRB find that the appeal by Long/Bierman is invalid due to lack of timeliness, standing, statute of limitations or on the merits.

Sincerely,

Chris Cole
384 North Street

Nic Anderson

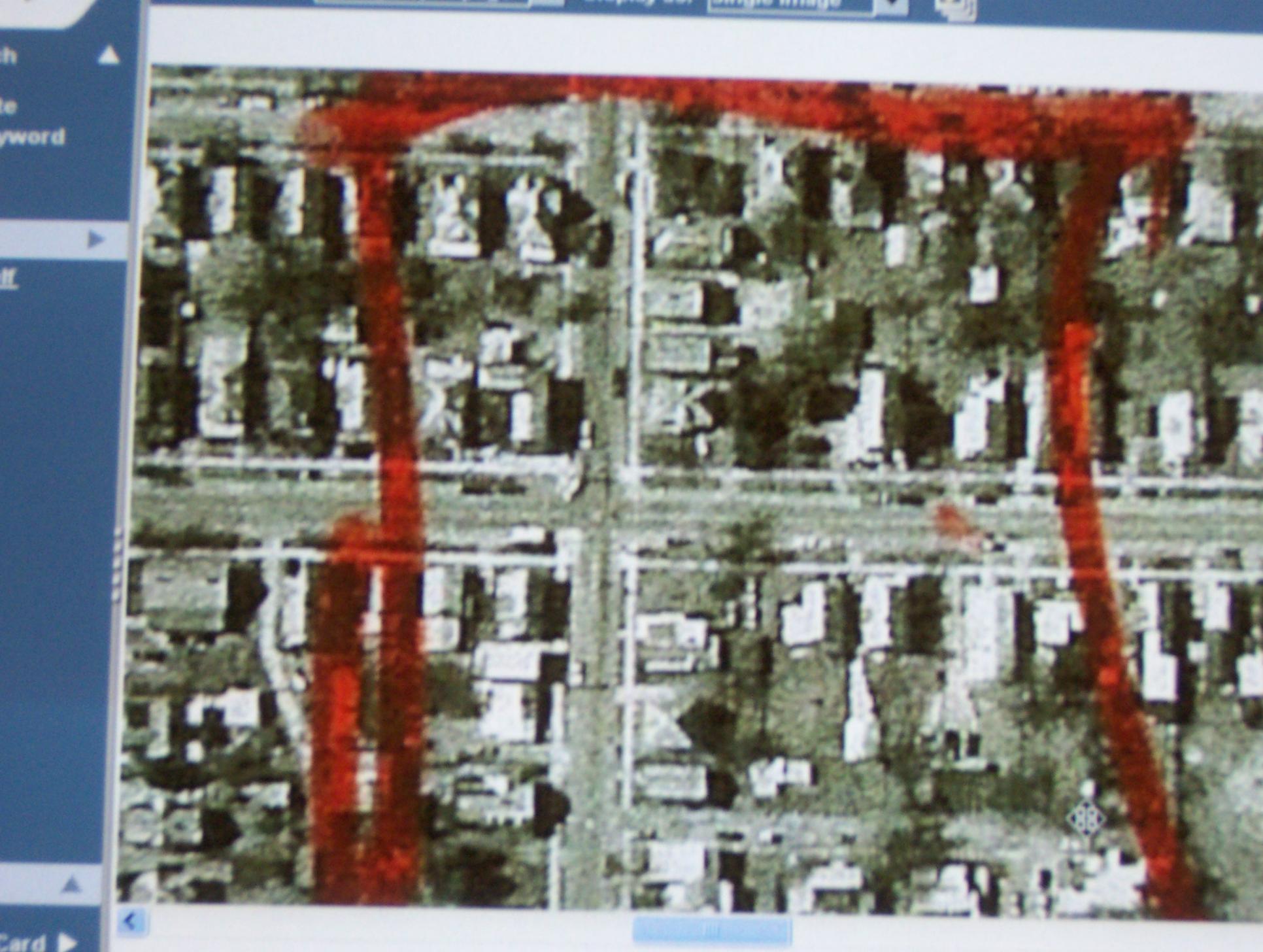
From: Chris Cole [clipper1018@comcast.net]
Sent: Tuesday, October 18, 2011 7:06 AM
To: Nic Anderson
Cc: Trey Polk; Leigh Cole
Subject: Fwd: 384 pics

 
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KB) KB) KB)

> This aerial photo from 1988 clearly shows a car parking in the spot
> adjacent to the driveway. There were photos from other years while
> not showing a car, did show tire tracks using the space.

Chris Cole

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> _____
> From: Trey Polk [trey@vermontkw.com]
> Sent: Monday, October 17, 2011 8:44 PM
> To: Cole, Chris
> Subject: 384 pics



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