

Dear DRB,

Thank you for your time and consideration this evening.

Requests:

1. Please extend ZAP-21-11 for 3 months so that I may include the appeal to ZP-21-560 in an upcoming combined DRB deliberative hearing.
2. Please consider the appeal to ZP-21-560 timely, so that it may be included in a combined hearing for ZAP-21-11.

Introduction:

I believe my appeal for ZP-21-560 – Determination for Non-Conforming Status of a Gravel Structure has been improperly dealt with. I hope to demonstrate that my appeal is timely today.

If you agree with me, then long term neighbors will have an opportunity to testify to history at my property during the 1960s and 1970s at the combined hearing for both appeals in early 2022. This history has the potential to clear up a long standing zoning dispute, by demonstrating a legally preexisting non conformity.

Background:

My family recently concluded 7 years of litigation with the city. Upon conclusion, we believed our zoning woes were behind us and we were very much looking forward to peace after the back loaded and cascading litigation we had experienced. But, we need to install a fence and submitted ZAP-21-11.

The extension request for ZAP-21-11, and timely appeal question for ZP-21-560 in front of you today represent a burgeoning zoning process to install a fence that will enclose our yard. We have a toddler, an energetic dog, and our family will grow in spring of 2022. The fence will provide important protections and peace of mind from the busy streets on either side of our property.

The appeal to the administrative denial to ZAP-21-11 questions why there is a DRB decision from April 2015¹ that states there is “no violation” and further states “the complaint is unsubstantiated” about a complaint that indicated, in part, a parking area was created. This is the same area that Mr. Gustin describes as an ‘ongoing violation’ in the DRB staff report² for ZAP-21-11 from July 2021. Later, in the same report Mr. Gustin again glosses over the discordance, that a DRB decision without a violation for lot coverage is being used as basis to remove lot coverage. He states “Very simply, the fence application cannot be approved until such time as an acceptable site plan is provided. That acceptable site plan is predicated on removal of the unpermitted southern parking area.” I very simply don’t understand why I would need to remove a structure when the DRB has already issued a decision on the area based on the evidence they were presented.

ZP-21-560 is a determination that documents preexisting non-conforming history of the gravel structure on the same strip of land³ cited by staff to deny ZAP-21-11. If ZP-21-560 is approved, the approval would

¹ DRB 2015 Decision – Background, Findings and Motion Section Excerpts. Full report also provided.

² DRP Staff report Excerpts - 7/20/21 for Appeal of Administrative denial to ZP-21-11 Fence Permit. Full report also attached

³ Screenshot of a Timeline history of the structure in question

resolve ZAP-21-11 and allow fence installation for my family's security. The approval would bring closure to a 7 year dispute with the city and provide peace to my family from never ending litigation.

The DRB may be surprised to hear that in the past 7 years of working with the city on zoning issues, that most of the time and energy expended by the city has been litigating to prevent legally preexisting non-conforming history from being heard. That legal history to this area that I had found, has never been considered for merit. Time and time again Attorney Sturtevant has submitted successful motions to exclude the legal history. So today, it is not surprise to again experience city staff employing tactics to exclude the full story, this time by calling my appeal untimely.

Timeliness Argument:

I submitted my appeal and fee for ZP-21-560 on 10/22/21. The reason for the appeal was to request a deliberative hearing to allow DRB members to see and hear firsthand from neighbors that observed the structure prior to the date the city acknowledges. Some of those neighbors will testify the structure existed prior to 1973, which according to Mr. Gustin gives the structure legal non-conforming status.

Early in the administrative decision portion of ZP-21-560, Mr. Gustin, identified 'evidence to the contrary' by cherry picking a single sentence from an affidavit written for other purposes; to respond to the complaints a neighbor had been threatening to submit for a year unless I gave him private land rights. At that time, the Mr. Cleary, the complaining neighbor, had indicated the gravel in question was not an issue for him⁴. This affidavit could not address code enforcement findings as they had not been issued yet. The BCE investigation was in its infancy. When the city investigation raised zoning allegations outside of the scope of original neighbor's complaint, that affidavit became insufficient to respond to city allegations. The health of the elderly previous owner significantly declined during this same time period and so could the affidavit was not updated. That is why long term neighbors now fill in the gap.

Mr. Gustin has indicated by City Policy⁵, he is required to administratively deny the permit if he finds there is "evidence to the contrary". We have discussed how the implementation of the policy conflicts with the burden of proof for "a preponderance of the evidence". I have understood the appeal would be necessary without a magic bullet solution because of this policy. I submitted the appeal because of this policy.

A few days before submitting the appeal for this permit, I also requested a reconsideration for the decision per a suggestion from City Attorney Sturtevant and Mr. Gustin to finesse more time into the decision. Mr. Gustin had asked about a potential magic bullet solution to date when the lowest gravel strata layer of the structure was laid using technology like carbon dating. With a reconsideration I could investigate if this technique was possible. The reconsideration also would allow time for City Attorney Sturtevant to clarify the city's position on the fence permit appeal. There seemed to be no downside to the reconsideration. I agreed to it and it was granted.

When I learned it was not possible to date the gravel strata⁶, Mr. Gustin and I began discussing logistics related to combing the appeal for ZP-21-560 and ZAP-21-11 into a single deliberative hearing. I needed time to coordinate participation to ZP-21-560. We agreed that I would request a 3 month extension to

⁴ Cleary Email: - The Gravel Structure is not an issue

⁵ City Policy on Non Conformity. –See point 4.

⁶ Knight Consulting Engineers Inc. and Geo Design were the two companies I consulted to date the gravel structure.

ZAP-21-11. Mr. Gustin knows that the only reason I requested an extension to ZAP-21-11 was to provide time to coordinate the participants in the appeal for ZP-21-560. I submitted the 3 month extension request in the ZP-21-560 permit the same day I was instructed, on 11/12/21.⁷

The reconsideration request was so that I could investigate a long shot magic bullet solution that was unlikely to pan out. I wanted to demonstrate that I would pursue all leads to contribute additional information into this determination. The reconsideration was not supposed to undermine my appeal. It simply allowed investigation into a novel, not used before method. The reconsideration did not address the underlying reason for my appeal. Mr. Gustin was not provided any new evidence during reconsideration. Although, it was discovered he had overlooked evidence previously submitted.

While my family and I were away for the Thanksgiving week, my appeal to ZP-21-560 was returned via *NON Certified* mail.⁸ I did not request that my appeal be returned, rescinded or nullified. Neither my project manager nor the city permitting system informed me that my appeal was being returned or had been nullified. I didn't receive my returned appeal in the mail until after 11/29, the last day of my appeal period. ***Invalidating or nullifying an appeal should be an administrative action that is documented in the permitting system to avoid unanticipated consequences!***

On 11/26⁹ and 11/29¹⁰, I communicated to appeal ZP-21-560. From all the context Mr. Gustin possesses, the conversations, the passion, the substantial research, the appeal, the reconsideration, the extension request, it is truly dis-ingenuous that Mr. Gustin would now represent these requests to be inquiries only. These were not requests out of the blue, without context. They were requests, within the appeal we had been working for 3 months and within an appeal period. As the project manager, he should be guiding me in the process, not stonewalling my requests to appeal.

Conclusion:

I have spent most evenings this week writing this statement, missing out on Holiday time with my family. My family does not desire never ending zoning litigation. Our intention today is to allow truthful and historical testimony to be heard that will contribute to the efficient resolution of the two appeals in front of you today.

I believe the summary of events shows I submitted an appeal for permit ZP-21-560 on 10/22/21. I took action to combine the two appeals like Mr. Gustin instructed by requesting the extension. The undocumented administrative action to return and nullify my appeal while I was away is something I could not anticipate or prevent or take timely action to correct. Mr. Gustin diminishes his own and city credibility by casting my appeal requests as mere inquiries and attempting to prevent this evidence from being considered. Please consider my appeal timely to ZP-21-560 so that I may present it alongside the ZAP-21-11 appeal.

With Respect,

Luke Purvis and Christina Lauterbach
164 North Willard St.

⁷ 11/12/21 extension request for ZAP-21-11 submitted within ZP-21-560 permit per instructions.

⁸ Request for a copy of my appeal to ZP-21-560.

⁹ 11/26 Email to appeal ZP-21-560

¹⁰ 11/29 City Permit System Communications to appeal ZP-21-560