



CODE ENFORCEMENT OFFICE

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TO: Development Review Board

FR: Jeanne Francis, Assistant Zoning Administrative Officer, Code Compliance and Enforcement

DT: March 6, 2016

RE: Report on Appeal #16-0845AP; Appeal of a Administrative Officer's Zoning Notice of Violation (ZV # 301663) issued on January 22, 2016, for Expansion of parking area without an approved zoning permit, for Premises Located at 75 Grant St, Burlington, Vermont

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Location: 75 Grant St, Burlington, Vermont

Tax Lot # 044-4-121-000

Appellant: Kevin Lumpkin, Esq., representing appellant Priscilla Toomey

Applicable Regulations: CDO Articles 2, 3, 5, 12 and VSA §4551

Appeal # 16-0845 AP

Overview:

The Code Enforcement Office alleges that parking has expanded at the subject property without zoning permits. The appellant asserts that the parking has existed continuously for more than 15 years and cannot be enforced against.

Appeal: Sec. 12.2.2 Appeals of Administrative Officer Decisions

- Appeal filed at the Planning/Zoning office on February 8, 2015, addressing all 5 requirements outlined under Sec. 12.2.2

Name and address of appellant:

Priscilla Rassin Toomey, trustee of the Isabel Rassin Revocable Trust under trust agreement dated February 3, 1989 who resides at 44 Merriam Place, Bronxville, New York

Brief description of the property with respect to which the appeal is taken

The parking area referred to in the January 22, 2016 notice of violation is adjacent to the side porch on the west elevation of 75 Grant Street (ie. parking area is north of west porch steps).

Reference to the regulatory provisions applicable to that appeal
24 V.S.A. §4454(a) and CDO §5.3.2

Relief requested by the appellant

Appellant requests a decision from the DRB that Violation #301663 has existed in its current form for more than 15 years without change, alteration, or modification and thus it falls within 24 V.S.A. § 4454.

Alleged grounds why such requested relief is believed proper under the circumstances
Violation #301663 has existed in its current form for more than 15 years without change, alteration, or modification and thus falls within 24 V.S.A. § 4454.

Appellant Submittals

- Notice of Appeal
- Lease Agreement dated 4th of February 2010
- Wheeler Affidavit
- Toomey Affidavit
- Lessor Affidavit dated February 7, 2015
- Photo of construction vehicle removing gravel from property

City's Submittals

- ZP 15-1405NA
- Photos (see attached)
- Aerial Photos
- Google Earth Images

Background Information:

- City Assessor Office records indicate Property use is a 4 unit residential building in a RH zone, 0.1734 acres, year built 1910, gross area 5,281, finished area 3,184 11 rooms, 5 bedrooms, 4 baths (prior to 2015 Assessor's records show only 10 rooms but confirm the 5 bedrooms and 4 bath). The attic not finished. There are two bedrooms in the basement 1505 sf.
- Code Enforcement Office: Housing Inspection records indicate property has 4 units, 5 bedrooms (with the exception of 2004 there are 6 bedrooms). Code records indicate two units on the first floor and two units on the 2nd floor. Does not appear to be any units in the basement. In 2004 records indicate there is one 1 bedroom, two 2 bedrooms, and one 3 bedroom units. In 2003 records indicate there are 2 parking spaces.
- Planning/Zoning Office does not have any historic zoning permits for this property; other than the recent Non-applicability permit issued in 2015 for the west porch repair.
- Public Works records indicate two electric permits and one mechanical permit.
- November 17, 2015 Code street patrol revealed gravel being dumped and spread at Property, immediately followed up with a Notification Letter; no response. On January 12, 2016 property manager Curt Wheeler phoned the office to say the gravel would be removed and parking

north of the stairs leading to the open porch on the west elevation was "grandfathered". Mr. Wheeler was instructed to submit supporting documentation for his claim, however, the documentation did not support use of the parking for a continuous 15-year period; violation upheld, Owner appealed notice of violation. Owner has indicated she would request "stabilized use" determination from the Assistant Administrative Officer/Principal Planner.

State Statutes

24 V.S.A. § 4451 Enforcement Penalties

No action may be brought under this regulation unless the alleged offender has had warning of at least seven days' to cure the violation.

Notification letter mailed on November 17, 2015 and a Certified Notice of Violation was mailed on January 22, 2016; certified letter outlined options in which to cure the violation and of possible fines. .

24 V.S.A. § 4454 Enforcement; limitations

(a) ... if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date of the alleged violation first occurred and not thereafter, ... The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

Appellant is bringing appeal under 24 V.S.A. 4454 Enforcement; limitations, however, has not successfully proven the violation has existed for a consistent period of 15+ years (in same location, same dimensions).

Comprehensive Development Ordinance (CDO)

Article 2. Enforcement

Sec. 2.7.5 Observation or Complaints of Violations

... that have been taken.

The observation of a violation on the part of the administrative officer shall be considered an Investigation, and the alleged violator may be issued a notice of zoning violation or a municipal civil complaint ticket.

City Official observed gravel poured over existing area (north of side porch), increasing parking area without zoning approval. Upon investigation the City found the gravel was unpermitted and there was an inconsistent use of parking in this area over the years; appellant removed the majority of the

gravel, however, there are still sparse gravel patches. Gravel was also added west of the driveway to a property that is also owned by Appellant; majority of that gravel was also removed.

Article 3. Applications, Permits, and Project Review

Sec. 3.1.2 Zoning Permit Required

Except for that development which is exempt from a permit requirement under Sec. 3.1.2(c) below, no development may be commenced within the city without a zoning permit issued by the administrative officer including but not limited to the following types of exterior and interior work:

(a) Exterior Work:

3. Change of use or expansion of use...
5. Alterations, changes, or modifications to building lots or sites related to site improvements, including, but not limited to, increased lot coverage.
6. Excavation or fill related to site improvements...
12. New or expanded parking areas, driveways, and walkways. Including paving existing gravel surfaces...
16. Site improvements...
20. ...

Under Sec. 3.1.2. (a) of the CDO, expansion of the parking area requires a zoning permit; Appellant has failed to obtain zoning approval for expanding the parking.

Article 5 Citywide General Standards

Article 5, Part 3: Non-Conformities

Sec. 5.3.2 "Bianchi" controlled uses, structures, and lots.

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the Bianchi decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.

Appellant has indicated the alleged violation of "increased parking area" at Property has continuously existed for a period equal to or greater than 15 years, however, documentation submitted by Appellant is inconclusive; burden of proof is upon the Appellant. Documents do not coincide with City records that indicate parking has been sporadic over the years and not consistent. The 15'19'x20' concrete pad south of driveway appears to be the foundation for an old garage that was removed, but the City has no supporting documentation. The driveway tailors off in-line with the concrete pad which is shown in Aerial photos (both present and prior) and supports the City's belief that this pad was intended for parking for this property (3-4 spaces for a 5 bedroom structure; one additional space has been created off the cement pad [under grown trees], but there is no evidence as to the length of

time the space has existed or when it was created). Evidence concludes parking has been creeping into the area north of the side step over the years and Appellant was trying to cement the area as parking when gravel was placed over this area.

Article 12. Appeals, Conditional Uses, Variances

Sec. 17.1.3 (a). The appeal submission is complete. A brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such requested relief is believed proper under the circumstances have been filed.

Code Enforcement Officer conducted a routine street patrol on November 16, 2015 and noticed construction trucks spreading gravel over the area north of side steps but did not notice a "Z" (red 11x14 card notifying interested parties that a zoning permit had been obtained); Officer recalled a recent visit to the property, September 22, 2015, and at that time a gravel area was not evidenced. Upon return to the office Officer verified there was no permit associated with placing gravel at the Property. On November 17, 2015 Code Enforcement Office issued a notification letter to Owner informing Appellant of an increase in parking area without zoning approval; Appellant did not respond to letter; a notice of violation followed on January 22, 2016

Findings:

- June 24, 2015, Planning/Zoning Office issued a Non-Applicability Zoning Permit to "repair porch and side bay windows, replace rotted wood, replace end gable with same trim, replace cellar entrance same, replacing in-kind". Attached photos show no gravel or parking along the porch (north of existing driveway) where parking is occurring now and gravel has replaced the grass (hereinafter referred to "area in question" and noted in photos below).
- July 22, 2014 site visit to property for an unrelated matter disclosed no gravel or parking in area in question (see attached photo).
- September 21, 2015, site visit to property revealed no gravel or parking in area in question (see attached photo).
- November 16, 2015, site visit to property revealed gravel and parking within area in question (see attached photo).
- November 17, 2015 Code Enforcement Office issued Owner a notification letter informing them of a possible zoning violation – *expansion of new parking area without an approved zoning permit*; Owner never responded to the notification letter.
- Aerial photos from 2000, 2004, 2013 and (May) 2015 does not disclose any gravel or parking within area in question (with the exception of 2000 there is one car). 2015 Aerial does disclose evidence of some grass within area in question.

- There are no records of any approved municipal permit granting Appellant permission to replace grass north of the side porch with gravel or to change use to a parking lot. Evidence shows that there is a 15'19'x20' concrete area that aligns with the existing driveway that has been used for parking for the 5 bedroom structure since 2000.
- On January 22, 2016 the City of Burlington issued a notice of violation to Appellant for expanding the parking area north of the side porch without zoning approval. Description of the violation (along with photos), remedies, and appeal rights were included with the notice.
- On January 27, 2016, property manager Kurt Wheeler responded to the notice of violation asserting that *the area has always been used as parking*. It was explained to Mr. Wheeler that the Owner was given an opportunity to argue a "stabilized use" after receipt of the notification letter in November and Owner chose not to respond. Our office found sufficient evidence for an expanded parking violation at property and proceeded enforcement with the issuance of a Notice of Violation; a decision regarding stabilizing a use must come from the Administrative Officer and should have been requested after receipt of the Notification Letter.
- On February 4, 2016 communication was exchanged with Appellant's attorney, Kevin Lumpkin. Attorney Lumpkin provided the City with Affidavits, leases, and a photo showing construction equipment removing gravel from property.
- On February 8, 2016 Appellant filed a complete appeal application with the City's zoning office.
- After internal discussion between Code Enforcement, Planning & Zoning, and the City Attorney's Office, on February 18, 2016 a communication was emailed to Attorney Lumpkin reiterating that the City finds there is ample evidence to pursue an expanded parking violation at the property. Attorney Lumpkin responded, on behalf of his client, they would they would file a "stabilized use" request , but would continue with their appearance before DRB; to date, a "stabilized use" request has not been made.
- As of today, property remains in violation. Although gravel has been removed, parking continues north of the side porch without zoning approval.

Summary

In summary, Appellant placed gravel north of the side porch and expanded the existing parking area without zoning approval. The City has researched its records and found no permits on file to increase the parking area. The gravel placed within the area north of the side porch has been removed, however, parking continues in this area without zoning approval. We reviewed the Appellant's submittal of leases and affidavits, but the information provided is insufficient in proving a violation does not exist on property. Investigation included extensive review of Aerial photos from 2000 until 2013. Google Earth images of the Property were used that includes today's date and history of the property provided by Google Earth. Findings conclude there is evidence of some grass within the area in question and there is no consistent parking north of the side porch during these years. There is, however, evidence of consistent parking on the concrete pad located south of the driveway that aligns with the driveway.

Code Enforcement Office requests the Development Review Board to uphold their decision that an expanded parking violation exists north of the side porch of Property and condition Appellant to remove the parking within 30 days from date of their decision. Further we request that the board require restoration of greenspace (lawn) the "expanded parking area" from side porch to the sidewalk and align with the existing driveway. In addition, Code Enforcement recommends that a barrier be constructed (to be reviewed and approved by Planning/Zoning – permit may be required) around the area to prohibit future use of area as parking.