

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: August 17, 2021
RE: 21-0629DT; 92 Farrington Pkwy

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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.

Zone: RL Ward: 7N

Owner/Appellant: Raymond K. Ingram, Jr.

Request: Appeal of adverse determination regarding yard parking and the 15-year statute of limitations for zoning violations.

Applicable Regulations:
Article 12 (Variances and Appeals)

Background Information:

The applicant has sought a determination that the yard parking occurring next to the driveway has been ongoing continuously for at least 15 years and is, therefore, an unenforceable zoning violation per the 15-year statute of limitations. The yard parking is located just to the east of the driveway, immediately adjacent to the shared side property line with the adjacent residence. There is no zoning permit on file recognizing or permitting this yard parking space. An adverse administrative determination was issued, and the appellant is appealing that decision to the Development Review Board.

The DRB first heard this appeal April 6, 2021. The Board closed the hearing and, following deliberation, decided to re-open the public hearing to provide the appellant the opportunity to provide signed and sworn affidavits from neighbors as to continuous and uninterrupted use of the yard parking space for at least 15 years. Such documentation was submitted July 11, 2021.

Changes to these findings are **noted in red** below.

There are no previous zoning actions for this property.

Recommendation: **Uphold adverse determination** as per, and subject to, the following findings.

I. Findings

A complaint about expanded parking off the driveway was received by zoning enforcement October 9, 2020. A warning letter was sent to the property owner (the appellant) that same day.

Expansion of parking area requires site plan review and zoning approval in the residential – low density zone wherein the property is located. No zoning permit has been sought or obtained. Note that the location of the expanded parking within the side yard setback would preclude issuance of a zoning permit.

Rather than remedy the violation, the property owner sought recognition of the expanded parking as an unenforceable zoning violation per the 15-year statute of limitations. The owner sought that recognition with an administrative determination request that was filed January 13, 2021. Minimal evidence was provided with the determination request and consisted of two photos (one from 2004 and another from 2006) and a list of neighbors for the past 15 ½ years. The 2004 photo clearly shows absence of the yard parking. The 2006 photo is very blurry, but an area is circled by the property owner indicating the yard parking.

In addition to items provided by the property owner, staff reviewed orthophotos from 2000, 2004, 2016, 2018, and 2019. 2000 and 2004 clearly show absence of the yard parking. The 2016 orthophoto is blurry but may show it. 2018 and 2019 orthophotos clearly show the yard parking. The zoning permit record was reviewed and revealed no zoning permits for the property.

Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance pertains to unenforceable zoning violations per the 15-year statute of limitations. In order to qualify as an unenforceable violation, the yard parking must have been in place and in continuous and uninterrupted use for at least 15 consecutive years. The burden of proof to demonstrate this continuous and uninterrupted use is on the property owner. The evidence provided did not conclusively meet this burden of proof. Note again that this yard parking is a violation of the zoning ordinance and cannot be permitted due to its encroachment into the required side yard setback.

Lacking solid evidence of continuous, uninterrupted use of the yard parking for at least 15 years, an adverse administrative determination was issued February 22, 2021.

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize that the yard parking next to the east side of the driveway has been in place continuously for over 15 years. The City reviewed the following documents and evidence to form its determination:

- The City's zoning permit records
- 2008 Comprehensive Development Ordinance and as amended
- Photographs and related document provided with the determination request
- Orthophotos of 2000, 2004, 2016, 2018, & 2019

Following review of these items, it is the determination of the Administrative Officer that insufficient evidence has been provided to demonstrate the continuous presence of this yard parking for at least 15 years. The yard parking is not evident in the 2000 or 2004 orthophotos. There is no zoning permit on file permitting this yard parking. As such, it is in violation of the Comprehensive Development Ordinance.

The property owner appealed this adverse determination March 8, 2021 – within the 15-day appeal period. The appeal contains additional photos (several are blurry) and another list of neighboring property owners seemingly in support of the request. The photos from 2006, 2008, 2009, and 2011 are blurry and difficult to interpret. Photos from 2012, 2015, 2016, and 2018 clearly show the yard parking. An additional street-level photo from February 2021 clearly shows the yard parking.

Supplemental documentation has been provided in the form of sworn affidavits from several neighbors and the appellant testifying as to the continuous presence of the yard parking. Four of the affidavits specify a time span between June 2005 and March 2021, whereas the fifth more generally refers to more than 15 years.

At the April 6, 2021 public hearing, the appellant testified that the van had been moved off the lawn and into the driveway. Comment in the code enforcement file dated March 24, 2021 is consistent with this attestation noting that the vehicle had been removed and seed planted for reversion to lawn. More recently, a photo taken by code enforcement staff dated August 9, 2021 shows the van parked in the driveway with lawn where the yard parking had previously occurred.

The additional documentation provided strengthens the assertion that the front yard parking continued for 15+ years. More recent discontinuance of that parking; however, limits its significance. Sec. 5.3.2, *Bianchi controlled uses, structures, and lots*, of the Comprehensive Development Ordinance prohibits reestablishment after discontinuance for more than 60 days. It clearly appears that the appellant discontinued the yard parking in March 2021 after receiving the warning letter from code enforcement in October 2020. Five months later, yard parking is still not evident.

While the appellant chose to appeal the adverse determination as to yard parking as an unenforceable zoning violation, he also chose to remedy the violation in March 2021. The provisions of Sec. 5.3.2 are geared towards achieving compliance with strict limitations as to discontinuance. In this case the violation has been discontinued and remedy implemented.

II. Recommended Motion:

Uphold the adverse determination 21-0629DT.