

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: July 20, 2021
RE: ZAP-21-11; 164 North Willard Street

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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: 1E

Owner/Appellant: Luke Purvis

Request: Appeal of administrative zoning denial of zoning application 21-0749FC to install a fence and related gates.

Overview:

The appellant is seeking approval to install a fence. The zoning application for the requested fence was denied and has been appealed.

This property has an extensive history of litigation focused on unpermitted parking areas to the north and south of the paved driveway and on the use of the residence. The most recent litigation, an appeal of an adverse determination seeking recognition as a pre-existing nonconformity or as an unenforceable zoning violation for both parking areas and the triplex use, resulted in permission for a duplex use and a requirement to remove and re-grass the northern unpermitted parking area. Prior litigation had found that the southern unpermitted parking area was not an unenforceable zoning violation. Neither unpermitted parking area has been recognized as a pre-existing nonconformity or an unenforceable zoning violation. No litigation remains pending.

The appellant recently (July 12, 2021) requested deferral of the appeal hearing. Staff does not support that request.

Recommendation: **Uphold administrative zoning denial** based on the following findings:

I. Findings:

The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex. The appellant is seeking approval to install a wooden fence in sections of various heights between 4' and 6' along the northern and eastern property boundaries.

The zoning application for the requested fence was filed March 9, 2021 and was deemed complete March 17, 2021. Following review of the application and prior zoning history and litigation

records, zoning staff followed up with the applicant via email on March 29, 2021 to point out the following:

- The unpermitted “south” parking space remains in place and in use. Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance precludes issuance of a zoning permit for properties that have ongoing violations – unless the permit is to remedy the violation. Such is not the case here.
- The site plan notes a few “nonconformities” that are not legitimately nonconforming. The site plan cannot be approved.

A follow up conversation occurred between zoning staff and the applicant on or about March 30, 2021 as to how the application could be modified to be acceptable.

A revised site plan was submitted April 2, 2021. The revised site plan removed the specific “nonconforming” labels in the prior site plan, but removal of the gravel southern parking area was not specific. It was shown as a green box, the same as other structural features on the property (the driveway, house, barn, etc). Correspondence continued in an effort to arrive at an acceptable site plan, and the application review period was extended by mutual agreement for 30 days.

Continued correspondence proved unsuccessful in producing an acceptable site plan, and the application was denied May 6, 2021 for the following reason:

1. Per Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance, existence of a continuing zoning violation on the property precludes approval of this zoning application. Specifically, the gravel parking area to the south of the paved driveway was found to be an enforceable zoning violation by the Development Review Board and in related court decisions relative to 15-0797AP and 19-0474DT. Lacking remedy of this continuing zoning violation, the application cannot be approved.

Essentially, Sec. 2.7.8, enables the zoning administrative officer to withhold issuance of a new zoning permit for properties in violation of the zoning ordinance. This section, adopted February 1, 2017, achieves a long held city policy objective to preclude new development on a property until outstanding code violations are remedied.

The unpermitted southern parking area remains in place and in use. Photographic evidence from March, May, and June 2021 show a pickup truck parked there.

An appeal of the zoning denial was submitted May 17, 2021; however, the appeal fee was not paid until June 2, 2021 and the basis for the appeal not provided until June 2 & 3, 2021. Sec. 12.2.2 (a) specifies:

An appeal must be taken within fifteen (15) days after the date of decision or act appealed from, and is taken by filing a written notice of appeal with the administrative officer and the DRB. Such notice of appeal shall include:

1. the name and address of the appellant;
2. a brief description of the property with respect to which the appeal is taken;

3. a reference to the regulatory provisions applicable to that appeal;
4. the relief requested by the appellant; and,
5. the alleged grounds why such requested relief is believed proper under the circumstances.

A notice of appeal shall be considered filed with the administrative officer and the DRB when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff; and,

Whenever an appeal is filed, the administrative officer shall forthwith transmit to the DRB all the papers constituting the record relating to the action appeal from.

The appeal was not made complete until well after the 15-day appeal period, despite the initial notice of intent to appeal being within it. Dismissal as untimely may be warranted.

The appeal is centered on an assertion by the appellant that the unpermitted gravel parking area alongside the south of the driveway is somehow legitimate. The appeal mixes references to the 15-year statute of limitations for zoning violation enforcement with pre-existing nonconformity, but it appears the appellant is trying to assert status as a pre-existing nonconformity for this parking area.

In December 2018, the appellant sought a determination recognizing, among other things, the southern parking area as a pre-existing nonconformity. The recognition was not granted. Appeals to DRB and then to the courts followed, and recognition as a pre-existing nonconformity was not granted at any level. Status as an enforceable violation was determined in prior DRB action and associated court decisions. This appeal of the fence application denial cannot collaterally attack prior final decisions. Nor can it turn into a new determination request.

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.

II. Recommended Motion:

Uphold the zoning application denial of 21-0749FC.