

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: December 21, 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. Also, consideration as to whether subsequent appeal of administrative determination was properly filed.

Overview:

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

This appeal has been pending since June 4, 2021 and was initially scheduled for DRB hearing July 20, 2021. In an effort to resolve the underlying matter as to the permit denial, the appellant requested deferral of the hearing in order to obtain an administrative determination as to the pre-existing nonconforming status of the gravel strip along the southern edge of the paved driveway. Much of the time since the July deferral has been spent working on the determination, which was administratively issued November 12, 2021.

At this point, the appeal will time out (expire) unless an extension is granted by the DRB. The appellant is seeking an extension.

A second matter for DRB consideration is whether the appellant's appeal of the administrative determination was properly filed. No consideration of the merits is requested at this time – just whether the appeal has been filed properly.

Recommendation: Grant the time extension for the fence appeal and dismiss the appeal of the administrative determination based on the following findings:

I. Findings:

Time extension for fence appeal:

Sec. 3.2.5, Completeness of Submission, Administrator's Action:

This section allows deferral of action on complete applications for up to six months. For items subject to DRB review, the six month time limit may be extended up to two times. Each extension is limited to three months. As noted above the fence appeal was completed June 4, 2021. The appellant requested extension in November, 2021. If extended, and the determination appeal is found to be proper, the two matters will be combined into one appeal with a hearing on the merits likely in early 2022. An initial three-month extension is warranted.

Appeal of administrative determination:

Sec. 12.2.2, Appeals of Administrative Officer Decisions:

An appeal of an administrative decision must be filed with the administrative officer within 15 days of the decision. This criterion (Notice of Appeal) specifies what must be included in an appeal.

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 administrative determination request was made complete in July 2021. Following months of review and correspondence with the applicant, an adverse administrative decision was issued October 8, 2021. This determination was mailed via certified mail to the applicant and posted in the online permit system along with notice of the 15-day appeal period. The applicant sought reconsideration of that decision but also filed a written notice of appeal and payment within 15-days of the decision. The request for reconsideration was granted, and the applicant was notified of that October 27, 2021. The appeal of the initial determination became moot, and the appeal was mailed back to the applicant.

Following consideration of additional evidence provided by the applicant, a new adverse administrative determination was issued November 12, 2021. It was mailed to the applicant via certified mail and posted in the online permit system along with notice of the 15-day appeal period.

Through the comments field in the online permit system, the applicant commented November 29, 2021 “Ps. Make sure this is appealable.” Staff commented back the same day “This administrative determination is appealable. Today is the last day of the appeal period.” Day 15 of the appeal period fell on Saturday the 27th, so an appeal could be filed through Monday the 29th. The applicant commented again on November 29 after the close of business “... Please confirm I will be able to appeal. I sent an email about this as well.” The applicant’s email, dated November 26, 2021 reads “Please make sure I’m able to have a DRB hearing on this decision.” Staff commented back on November 30, 2021 “As I mentioned yesterday, the admin decision is appealable. Yesterday was the last day to file an appeal.”

In light of the pending fence appeal and its relationship to the determination, staff had offered to combine an appeal of the determination with that of the fence. The appellant did not state whether he would like to do that or not. In any event, no part of the foregoing correspondence is an appeal. It can reasonably be understood as inquires by the applicant as to whether or not the decision could be appealed to DRB. The question was asked by the applicant and answered by staff.

II. Recommended Motion:

Grant the requested extension for the fence denial appeal and dismiss the administrative determination appeal.