



Department of Permitting and Inspections

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TO: Development Review Board

From: Ted Miles,
Department of Permitting and Inspections

Date: February 4, 2021

RE: Report on **Appeal #21-0593AP**; Appeal of an Administrative Officer's Zoning Notice of Violation (ZV #380795) issued on December 3, 2020, Operation of an automobile/vehicle salvage yard without a zoning permit. Occupation without Unified Certificate of Occupancy for the property at 110 Riverside Ave, Burlington, Vermont.

Note: This is the Administrative Officer's report; decisions are made by the Development Review Board, which may overturn or uphold the Zoning Administrator's Decision. **THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Location: 110 Riverside Ave, Burlington, Vermont

Tax Lot # 046-3-081-000

Appellant: Sisters and Brothers Investment group LLP

Representative: Brian Hehir Esq

Applicable Regulations: CDO Articles 2, 3, 4, 5, 8, 12 and 24 VSA §4451

Appeal # 21-0593AP filed on December 18, 2020.

Violation:

- A. Operation of an Automobile/vehicle salvage yard without a zoning permit.
- B. Occupation without a Unified Certificate of Occupancy.

The following Zoning permits do NOT have a Final Certificate of Occupancy:

Zoning permit 97-274 - Renovations to the existing commercial complex, with an addition to create multiple retail storefronts. Existing = 4466sf + 960sf being removed, + 2947sf thus creating 1987 net new square footage.

Zoning permit 97-460 - Partial demolition of the existing structure and parking area to facilitate improvements included in coa 97-029.

Zoning Permit 99-362 - Change of use from vacant commercial to auto and light truck repairs. No exterior changes proposed to the structure. (Site currently contains a used auto dealer.)

Zoning permit 01-318 - Installation of a new nonilluminated parallel sign (2.5' X 6') Over the entry of the existing used car sales establishment within the existing commercial complex. No change in use.

Zoning Permit 04-314 - Increase number of display cars from 25 to 45 and decrease 10 spaces for repair business to 6 spaces. **It appears from the 2006 photos that this permit was enacted.**

Zoning permit 13-0650CA/MA - Proposed 57-unit residential building with associated underground parking. **This permit was not enacted and can be relinquished,**

There is a current zoning permit, zoning permit 21-0471CA, that has recently been approved for partial demolition of the building, this permit is for partial demolition of the building only and does not include any landscaping or site changes. The approved site for landscaping and barriers and such will need to comply with zoning permit 04-314 approved on January 13, 2004.

CDO Article 2. Enforcement Timeline

1. February 6, 2020. Staff was at an adjoining property when it was noticed there were multiple vehicles in differing state of disrepair and some vehicles did not have state registration plates on them.
2. February 6, 2020. Warning letter was sent to owner of property identified as Sisters & Brothers Investment Group LLP at 75 South Winooski Ave, Burlington, Vt.
3. Owner was going through a permitting process at that time so the decision was made to hold off on issuing the Notice of Violation until the permit application was acted on. The Zoning Permit was denied by the Development Review Board and is currently under appeal to the Superior Court Environmental division.
4. December 3, 2020. A notice of Violation was mailed to the owner of the property noting the violation of Operation of an Automobile/vehicle salvage yard without a zoning permit and Occupation without a Unified Certificate of Occupancy.
5. December 18, 2020. Received appeal for Notice of Violation issued on December 3, 2020.

Background Information:

- **ZP13-0650CA.MA.ZP 13-0129; Sketch Plan** review of project. Reviewed by DRB September 18, 2012.
- **Zoning Permit 05-065SN; 4' x 6' parallel sign for M & H Auto.** Approved August 2004. **This permit has received the Final Certificate of Occupancy on November 30, 2004**
- **Zoning Permit 04-314;** Increase number of display cars from 25 to 45 and decrease 10 spaces for repair business to 6 spaces. Approved January 2004. ***This is the last permitted use of the property.***
- **Zoning Permit 01-318 / COA 097-029;** Installation of a new nonilluminated parallel sign over the entry of the existing used car sales establishment within the existing commercial complex. No change in use. Approved February 2001.
- **Zoning Permit 99-362;** Change of use from vacant commercial to auto and light truck repairs. No exterior changes proposed to the structure. Site currently contains a used auto dealer. Approved March 1999.
- **Zoning Permit 99-419 / COA 097-029B;** Installation of a nonilluminated freestanding sign for the existing auto and light truck repair facility. Approved April 1999.
- **Zoning Permit 99-570 / COA 097-029C;** Installation of two signs for the existing auto repair facility. Approved June 1999.
- **Zoning Permit 98-311 / COA 097-029;** replacement of existing sign faces at existing auto sales building. Approved January 1998.
- **Zoning Permit 98-310 / COA 097-029B;** Change of use from retail (see COA 97-029) to used car sales. Maximum outdoor storage of 25 cars. Approved January 1998.
- **Zoning Permit 97-460 / COA 097-029A;** Partial demolition of the existing structure and parking area to facilitate improvements included in COA 97-029. Approved May 1997.
- **Zoning Permit 97-274 / 097-029;** Renovation to the existing commercial complex, addition to create multiple retail storefronts. 1987 net new square feet. Approved January 1997.
- **Zoning Permit 88-031;** one internally illuminated aluminum sign. Approved August 1988.
- **Zoning Permit COA 87-199;** Convert building to auto body shop; minor exterior work. Approved January 1988.

CDO Article 3 Part 1: General provisions and Zoning permits

Sec. 3.1.2 (a) 3

Except for that development which is exempt from a permit requirement under subsection (c) of this section, 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:

3. Change of use or expansion of use.

CDO Article 12. Appeals, Conditional Uses, Variances

Appellant filed a complete appeal as outlined under CDO Article 12 Sec. 12.2.2

Article 13 Definitions.

Automobile/Vehicle Salvage Yard: Land or buildings used for the collection, wrecking, dismantling, storage, salvaging, and sale of machinery, parts, or vehicles not in running condition. Three (3) or more unregistered vehicles are considered an automobile/vehicle salvage yard. An automobile/vehicle salvage yard does not include automobile/vehicle repair as defined in this article.

Summary:

The representative of the owner is claiming under response number 2 that the property is not used as an “automobile / salvage yard” but has also stated under response number 3 that the property is a pre-existing nonconforming use, and the alleged uses complained of, have, upon information and belief, existed continually for over 15 years. As noted in the response from the representative of the owner, it is unclear how the violation does not exist but is claiming a 15 year status as though it does exist.

Enclosed with the information provided from staff are photos dated February 2006 that clearly show the last permitted use as a vehicle repair and vehicle sales. Those photos were taken when the owner of M&H auto requested to close their zoning permit, zoning permit 05-065SN, for their new sign installation. The Certificate of occupancy has been issued for that permit. Those photos show the use of the property 14 years ago thus denying the 15 year statute of limitations. It is unknown after that date when the business closed their doors.

The 2004 GIS photo shows the condition of the property when it was being used as an auto sales/service. The 2013 GIS shows fewer vehicles with multiple tow trucks in front of the building with a small number of vehicles at the property. The 2019 GIS shows an approximation of 40 vehicles at the site.

The 2020 photos provided show multiple vehicles that have been in accidents, have no license plates and are in different state of disrepair.

Conclusion:

The Code Compliance Officer for Permitting and Inspections Department hereby requests the Development Review Board uphold ZV #380795 as valid. The following stipulations are recommended:

1. Within 60 calendar days from date of DRB decision, owner shall cease operation of the automobile/vehicle salvage yard, remove related debris and vehicles, and restore the property to its most recently permitted condition in accordance with the December 2020 zoning permit that removes a portion of the building and the approved site plan and landscaping from zoning permit 04-314 approved on January 13, 2004. Close all open zoning permits with a Unified Certificate of Occupancy. In the event that the December 2020 zoning permit is not enacted the zoning permit approved on January 13, 2004 shall remain in full effect as approved.