

Department of Permitting & Inspections

Zoning Division
149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator



TO: Development Review Board
FROM: Scott Gustin
DATE: October 1, 2019
RE: 19-0930CA; 221-223 Saint Paul Street

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: FD5 Ward: 5S

Owner/Appellant: Dennis Ailor / Chris Khamnei

Request: Appeal of administrative zoning permit approval to re-grade and stabilize slope where prior retaining wall was removed.

Overview:

The appellant is seeking to reverse the approval of an administrative zoning permit issued for grading and stabilization work. The proposed work runs the length of the shared property line between 221-223 St. Paul Street and 225-227 St. Paul Street. The appellant and appellee are owners of the two neighboring properties. The proposed work is intended to remedy the situation resulting from the unpermitted retaining wall removal, replacement, and subsequent removal of the failed replacement retaining wall.

The subject property is located in the Form District 5 (FD5). The proposed work is subject to the provisions of Article 14 of the Comprehensive Development Ordinance, specifically Sec. 14.4.6 (e) *Grading or Regrading of Sites*, and 14.6.8, (c) *Landscape Standards*.

Recommendation: Uphold issuance of zoning permit based on the following findings and conditions:

I. Findings:

This appeal is only of the zoning permit approval for grading and stabilization work. Some background information is provided for context.

A “non-applicability of zoning permit requirements” form was issued by the Department of Planning & Zoning July 19, 2017 for repairs to an existing retaining wall at 221-223 St. Paul Street. A related building permit was also issued for retaining wall repairs. Rather than repair the old stone retaining wall; however, it was removed and replaced with a new retaining wall of large concrete blocks in 2018. A notice of zoning violation was issued for unpermitted site work and other items in 2018. The wet spring weather of 2019 contributed to the quick failure of the new retaining wall. The city engineer, Norm Baldwin, issued a dangerous building order to the owner of 221-223 St. Paul Street (Dennis Ailor) May 14, 2019. That order remains outstanding; however, the concrete block retaining wall was removed later that month. A related stop work

order was issued by the city engineer. Mr. Ailor applied for a zoning permit May 30, 2019 to regrade and stabilize the length of area where the retaining wall had been removed. That zoning permit was approved June 25, 2019.

The zoning permit application included three alternative scenarios to regrade and stabilize the subject area. The applicant selected "Option 1." This option includes no new structure and amounts to a substantial reduction in the angle of slope. The application materials include a site plan, cross section, and related erosion control and slope stabilization details. The application represents all work to occur on 221-223 St. Paul Street.

The zoning permit was approved June 25, 2019 within the 30-day administrative clock. As some items remained outstanding, the zoning permit was approved with two pre-release conditions:

1. Prior to release of the zoning permit, a revised site plan clearly depicting the limits of the proposed grading work and impacts, if any, to onsite parking shall be submitted subject to staff review and approval.
2. Prior to release of the zoning permit, the applicant shall fully resolve the outstanding Dangerous Building Order and Stop Work Order issued by the Department of Public Works and currently affecting the property.

Neither condition has been met. An appeal of the zoning permit was filed by neighboring property owner (225-227 St. Paul Street), Chris Khamnei, on June 27, 2019, within the 15-day appeal period.

The appeal asserts that the approved zoning permit legitimizes the placement of dirt along the appellant's building at 225-227 St. Paul Street and requests that, instead, a new retaining wall system be designed and installed to hold the earth away from his building.

The proposed grading plans for Option 1 clearly depict soil being pulled back to a more gradual slope of 1' vertical rise for every 2' horizontal distance. No soil is permitted to be placed up against the neighboring building. The toe of the proposed slope is even with the grade of the adjacent property.

The provisions of Sec. 14.4.6 (e) *Grading or Regrading of Sites*, limit the height and placement of retaining walls and preclude construction of buildings that do not reflect existing topography. The proposed grading work includes no new retaining walls or buildings. Nor does it include substantial topographic alterations. It simply lessens the degree of slope. The relevant provision of 14.6.8, (c) *Landscape Standards* (specifically item iii) precludes bare earth. As proposed, the regraded slope would be stabilized with ground cover vegetation.

The present situation has gone on too long and has been exacerbated by work without, or prior to, permit approvals. The unstable slope between 221-223 St. Paul Street and 225-227 St. Paul Street needs to be remedied. Issuance of zoning permit 19-0930CA for grading and stabilization work enables this remedy.

II. Recommended Motion:

Uphold approval of zoning permit 19-0930CA.