

Department of Permitting and Inspections

Zoning Division
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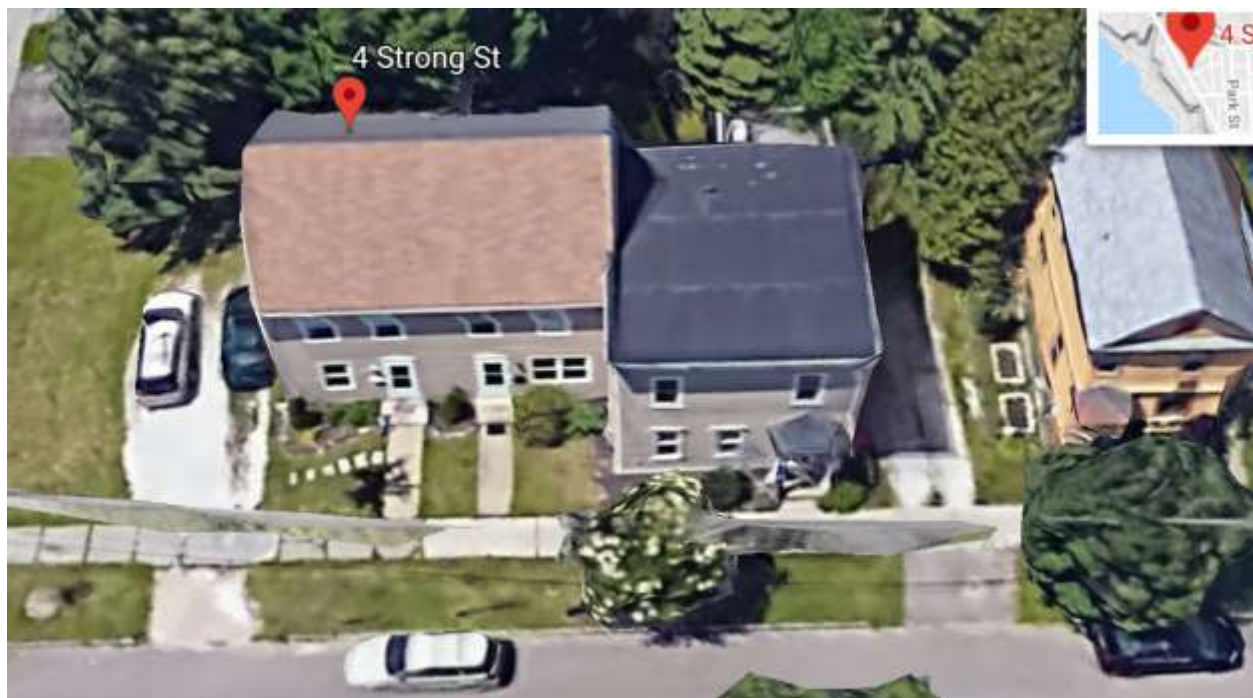


MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: August 4, 2020
RE: ZP20-0914CA / AP 4-8 Strong 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.

File Number: ZP20-0914CA (Appeal)
Zone: RM **Ward:** 3C
Date application accepted: May 22, 2020
Date of Decision: May 29, 2020
End of Appeal Period: Saturday, June 13 2020
Date of Appeal submission: Tuesday, June 16 2020
Applicant/ Owner: Alan Bjerke
Appellant: Missa Aloisi
Request: Restore gravel driveways to same dimension, modify entry stairs to 8 Strong Street to meet code. No change to coverage. (4-8 Strong Street is a four-unit condominium complex.)



Background:

- **Zoning Permit 20-0506CA** (8 Strong Street Unit B), Replacement windows, replace exterior deck door with sliding glass door, install mini-split heat pump system. December 2019.
- **Zoning Permit 16-1328CA** (6 Strong Street), replace patio door. May 2016.
- **Zoning Permit 14-0131CA** (6 Strong Street), replace seven existing windows in non-historic ell of building. August 2013.
- **Zoning Permit 13-0449CA (Units 4 and 8A)**, replace thirteen windows on condominium building with new windows. October 2012.
- **Non-Applicability of Zoning Permit Requirements 11-0144NA**; replacement of deck with identical design, location and size. August 2010.
- **Zoning Permit 82-398 / COA 82-77**; Convert existing vacant structure to four residential units. Front setback decreases existing noncompliance. August 1982.
- **Request for variance of the required front yard setback (Public hearing 9/2/82)**, variance granted. Application withdrawn. Reference made to the plans of COA 82-77.

Overview: Property owner Alan Bjerke (and President of the Champlain Heights Condominium Association) submitted an application May 22, 2020 to *place a new garden shed, refresh driveways, modify entry stairs to 8 Strong Street for code compliance*. Upon staff review of the original application, concern was raised about inconsistency of the site plan with previously approved 20-0506CA, and the addition of a shed (ultimately removed from the request) which would unacceptably increase lot coverage.

A revised site plan, eliminating the shed and acknowledging previously approved driveway dimensions and setbacks on a scaled plan approved under 82-398 / COA 82-77 resulted in administrative approval May 29, 2020.

The appellant Missa Aloisi left a voicemail at the department general voicemail box on June 4, 2020 (within the appeal period). Due to limited and rotational staffing at the Department of Permitting and Inspections, the voicemail was not retrieved until after the appeal period had expired.

The 15 day appeal period ran through June 13, which was a Saturday.

The Planning Technician released the zoning permit electronically to the applicant Monday, June 15 2020.

The appellant contacted P&I staff Monday, June 15, 2020, and electronically filed an appeal June 16, 2020 (10:47 pm). Revisions to that appeal were submitted June 17, 2020.

The DRB must first ascertain whether the appeal is timely; that is, filed within the allotted 15-day appeal period. The DRB, upon an affirmative decision, may then review the substance of the appeal.

Recommended motion:

(On timeliness of appeal) The appellant’s request to recognize a timely appeal fails if the scope is limited to factual submission of appeal documents. The unusual circumstances of scheduled rotation and limited staffing during the pandemic, however, beg an allowance for a phone inquiry made during the appeal period. Staff recommends **acknowledging the timeliness** of the appeal based on the most unusual context of limited staffing.

(On substance of appeal) The applicant and appellant’s conflict is based largely on differing surveys. The appellant relies upon a land survey submitted for the purposes of fence installation (on the opposing property line of her parcel) the fence permit issued April 1996 (ZP96-479). The applicant has utilized the parcel survey recorded in the land records for the purpose of rehabilitating the structures for 4 units; certified and recorded in 1983. (ZP82-398 / COA 82-77.) Staff recommends **upholding the Certificate of Appropriateness approval**, based on a previously approved and scaled site plan for the rehabilitation and reuse of the property.

I. Findings

Article 3: Applications, Permits and Project Reviews

Section 3.1.2 Zoning Permit Required

(a) Exterior work

1. Additions to existing buildings, garages, accessory buildings, or other structures.

5. Alterations, changes, or modifications to building lots or sites related to site improvements including, but not limited to, increased lot coverage.

The original submission application requested a shed placed just off the driveway, which would have increased the existing level of non-conformity to lot coverage. Upon further review and examination of alternatives, this portion of the application was withdrawn by the applicant.

For purposes of “refreshing driveways”, staff needed to confirm the existing and approved dimensions of the driveways so as not to increase lot coverage, change approved setbacks or diminish parking. Although the applicant has provided an annotation intending a 5’ setback for the easterly driveway, the proposed setback was inconsistent given the approved and scaled site plan of ZP82-398 / COA 82-77. Such a setback would also diminish the previously approved parking, which acknowledged 8 parking spaces for the 4 unit use. Upon confirmation of those dimensions, and in consultation with the property owner, staff annotated the submitted site plan with driveway dimensions to be consistent with the 1983 site and parking approval. **Affirmative finding.**

Sec. 3.2.2 Application Types and Submission Requirements

(c) Certificate of Appropriateness (COA) Level I Application:

The application included a site plan (reduced from original size), annotated with the desired changes. Submission documents included photographs of the subject site. For purposes of a zoning permit application, the application was complete. **Affirmative finding.**

Section 3.2.4 Application, Forms and Fees

(b) Posting of Property:

Any applicant requesting a zoning permit shall display on the subject premises an application notice provided by the department of planning and zoning. The notice shall be clearly visible from a public way, shall be displayed at the time of application, and shall not be removed until after the expiration date of the appeal period. To the extent feasible, the public should be able to read the application notice from the public way.

The applicant was provided a red “Z” card, which was posted on the ground floor of the subject property. The applicant references the required posting in his appeal documents. **Affirmative finding.**

Section 3.2.9 Zoning Permits

(b) Permit Appeal Period:

No zoning permit granted by action of the administrative officer under this ordinance shall be released until a fifteen (15) day appeal period has passed. No zoning permit granted in association with a decision of the Development Review Board shall be released until a thirty (30) day appeal period has passed. In the event that a notice of appeal pursuant to the requirements of Article 12 is properly filed, the provisions of 24 V.S.A § 4449 (a) (3) shall control the effective date of the permit.

The application was administratively approved May 29, 2020. The 15-day appeal period expired Saturday, June 13, 2020. The zoning permit was electronically released by the Planning Technician June 15, 2020.

Permitting and Inspections staff was uninformed about the appellant’s concerns until after the permit had been released. **Affirmative finding** for permit release after the end of the appeal period.

Article 5: Citywide General Regulations

Part 3: Non-conformities

Section. 5.3.1 Purpose

These regulations are enacted for the purpose of governing all aspects of nonconformity, regardless of whether it is a use, a structure or a lot. As defined under Article 13, nonconformity means a use, structure or lot that was legal at the time it was constructed or laid out, but would not be lawful under the requirements of this ordinance. ...

In combination, these standards are intended to establish the property rights of individuals and organizations in a manner consistent with the overall goals of zoning and to promote the City's general health, safety, and welfare.

Section 5.3.3 Continuation

Except as otherwise specified in this Article, any nonconformity which lawfully existed at the time of passage of the applicable provisions of this or any prior ordinance or any amendment thereto may be continued subject to the provisions of this Part.

The applicant requests applying new surface material to existing driveways to the same dimension that was approved under ZP 82-398 / COA 82-77. As approved by the ZBA in 1983, setbacks differ from those required of the current ordinance. By this standard, the applicant may continue the same level of non-conformity. **Affirmative finding.**

Section 5.3.5 Nonconforming Structures

(a) Changes and Modifications:

Nothing in this Part shall be deemed to prevent normal maintenance and repair or structural repair, or moving of a non-complying structure pursuant to any applicable provisions of this Ordinance.

The application proposes the maintenance of the driveways by resurfacing with new gravel to the same dimensions approved under ZP82-398 / COA 82-77. **Affirmative finding.**

Article 8: Parking

Zoning Permit 82-398 / COA 82-77 established 8 parking spaces in two driveways for the 4 unit building. This application proposes “refreshing” the driveways with new gravel. Staff confirmed appropriate measurements from the original scaled plan to determine actual parking dimensions, and annotated the approved plan with those dimensions. To minimize the parking area by introducing a 5’ side yard setback (as suggested by the appellant) would render the parking deficient for the use and introduce new non-conformity to the lot. **Affirmative finding.**

Article 12: Variances and Appeals

Part 2: Appeals

Sec. 12.2.2 Appeals of Administrative Officer Decisions

Any interested person may take an appeal from any final order or decision of the administrative officer to the DRB within fifteen (15) days after the date of decision or act appealed from as follows:

(a) Notice of 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 appellant left a voice mail in the general mailbox of the Department of Permitting and Inspections June 4, 2020, within the 15-day appeal period. Due to limited and rotational staffing during the pandemic, that voice mail was not retrieved until after the appeal period had expired. The appellant then called Planning staff Monday, June 15, 2020 to request further information about the project. She was informed that the appeal period had expired 2 days prior, although on a weekend. The appellant then electronically submitted a notice of appeal June 16, 2020, with revisions submitted electronically June 17, 2020. Within her appeal documents, the appellant has provided supporting information relative to the timeliness of her appeal for DRB review. **Adverse finding** for filing appeal within the 15-day window.

The survey to which the appellant refers was completed by Gordon G. Harlow in 1986. The validity of information on the plan is challenged by annotations made by an unknown party that include component identifications (“*driveway*”), measurements (insertions made freehand, not in the script of the surveyor), property owner name changes, and for whom the survey was completed. Such alterations, if lawful, would require a revised survey to embrace all changes. Without a formal revision, the accuracy of the survey is unsound.

II. Conditions of Approval

1. The specific condition of ZP20-0914CA required driveway dimensions to remain consistent with the previously approved plan.

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