



Code Enforcement Report

ZP #: 15-0830AP

Tax ID: 045-1-236-000

City of
Burlington, Vermont
149 Church Street

Application Date: February 24, 2015 **Zone:** RL Ward 1

Property Address: 18-20 WESTON STREET

TO: Development Review Board
FROM: Jeanne Francis, Zoning Specialist, Code Enforcement Office
DATE: April 7, 2015
RE: 15-0830AP 18-20 Weston Street (Tax Lot # 045-1-23600) – hereinafter referred to as Premises

DESCRIPTION: Appeal of zoning violation # 279187: (1) Green space along southern boundary of property used as a Parking Lot; (2) Replacing green space with additional parking (increasing coverage); (3) Change of accessory use – garage; (4) Placement of trash receptacles; (5) Exterior storage.

APPELLANT: Charles and Cynthia Burns Represented by Brian Hehir, Attorney at Law

APPLICABLE REGULATIONS:

- Article 2, 3, 5, 8, 12; 24 V.S.A. §4454(a) and §4470

RELIEF REQUESTED BY APPELLANT:

- Appellant contends the parking lot in question has existed continuously for over 15 years and therefore, the City is barred from enforcement.

APPLICANT’S APPEAL SUBMITTALS

- Appeal
- February 12, 2015 Letter from Jeanne Francis: RE: Parking at Premises, Storage within Garage of Premises, and Occupancy of Residential Structural
- Notice of Violation # 279187 Dated February 12, 2105
 - ✓ Green space along southern boundary of property used as a Parking Lot ...
 - ✓ Replacing green space with additional parking
 - ✓ Change of accessory use: ... storage in garage
 - ✓ Placement of trash receptacles ...
 - ✓ Exterior Storage along the boundary of property...

CITY’S APPEAL SUBMITTALS

- Note to File: 3/31/2005, Mrs. Mahoney, 51 Henry St (complaint # 128416), complaint of parking at Premises; lived at property for 30 years and will testify the parking has increased over the years.
- May 31, 2005 “Show Cause Letter”

BACKGROUND:

- Pursuant to City Assessor records, Appellant purchased this 2-family 5,634 sf c.1915 structure in 2002. A detached garage is included on the property. As currently configured, one unit has 4 bedrooms, one unit has 5 bedrooms.
- March 31, 2005 Owner of property located at 51 Henry Street, abutting on the northeast corner of Premises, complained that Appellant increased the rear parking area; complainant stated “*she had lived at her property for 30 years and will testify the parking had increased over the years*”.
- May 31, 2005 Code Office mailed a “Show Cause Letter” (currently referred to as a “Notification Letter”) to Appellants, informing them of a potential parking violation. Appellant contacted Code Office on June 7, stated he could not produce sufficient documentation to prove parking had existed for a consistent period of 15+ years (24 V.S.A. § 4454(a)). I met Appellant at Premises on June 10 and discussed (1) location of dumpster, (2) parking along the southern boundary, (3) parking along the northern boundary, (4) use of the garage for storage, and (5) need for so much parking—Appellant identified 9 tenants, however, ordinance only requires four parking spaces for a duplex use and there is a 6-space garage on site.
- Appellant requested “grandfathering” for the parking so Code revisited City records (aerial photos, statements, etc.), and concluded, based on the information available, it was reasonable for the City to recognize 4-exterior parking spaces on the northern property boundary, one exterior parking space on the southern boundary (not 8 as requested by Appellant) and a six-car garage at Premises. An informal plan was drawn up showing parking recognized by the City; Appellant did not argue. Appellant placed barriers and shrubbery around the recognized parking area, no further parking complaints were received at the Code Office until 2014.
- November 2014 Code complaint regarding parking concerns at Premises. Notification letter sent to Appellant. Met with Appellant on Premises, reviewed concerns, found violations, and issued a formal Notice of Violation; notice appealed.

FINDINGS:

- (1) November 12, 2014 site visit to Premises with Appellant present; discussed parking and garage issues. Appellant noted two of the three vehicles parked along the southern boundary belonged to his tenants at 12 Weston Street. Parking for the six-car garage was replaced with storage owned by Appellant, Appellant’s daughter, two units for maintenance storage and repair shop for all of Appellant’s properties, and two units were being used for tenant storage.
- (2) November 21, 2014 site visit to Premises revealed: (a) 3 vehicles parked along the southern boundary; (b) exterior storage along the southern boundary in excess of 16 sf; (c) green space within the green space destroyed by illegal parking; (d) garage bays used for storage rather than parking; and (e) relocation of trash recepticals.
- (3) November 24, 2014 site visit to Premises revealed: (a) 1 vehicle parked along the southern boundary; (b) knocked on doors to each unit, nobody was home; (c) spoke with 2 tenants at 12 Weston Street, reviewed living and parking scenarios for tenants at 12 Weston Street. Interview concluded parking is allocated to one space in driveway, and along Weston Street, no parking at 18-20 Weston Street.

(4) February 11, 2015, met with Appellant at Premises; there were three vehicles parked along the southern boundary of Premises and 4 in the northern parking area.

DETERMINATION:

(1) Green space along southern boundary of property used as a “Private” Parking Lot; Allowing tenants at 12 Weston Street to park at 18-20 Weston Street creates a parking lot use that is not accessory to the residential use at 18-20 Weston Street. The Premises are restricted to one principal use which is the duplex. See *CDO sections 5.1.1(f) and Appendix A—Use Table—All Zoning Districts*. Accessory parking for the residents of 18-20 Weston Street is permissible as an accessory use, provided it meets the requirements of the CDO. However, parking for non-residents creates a parking lot use. While the parking is for tenants of another property owned by Appellant, it is still intergrating a new use at the Property. Under the CDO, “Surface/Lot Parking” is defined as, “Parking facilities that are at grade and uncovered or not within a structure.” *CDO 13.1.2*. Appellants have created a parking lot. In addition, A “Parking Lot” is not allowed in any residential zoning district. *CDO Appendix A—Use Table—All Zoning Districts*. The distinction regarding parking that is accessory and non-accessory has been identified in a prior appeal that went before the Vermont Environmental Court, *City of Burlington v. Wesco, Inc.*, 2008 WL 7242596 at 7 (Vt. Env’tl. Ct. March 6, 2008) (parking spaces rented out created separate use from permitted use of property convenience store/gas station/deli and the associated parking).

With respect to any 15 year statute of limitations argument, Appellants have not demonstrated 15 years of continuous use. Further, pursuant to case law, use violations are exempt from that limitation. See *City of Burlington v. Richardson*, 2006 WL 4088224 at 5 (Vt. Env’tl. Ct. June 27, 2006) (case law analyzes use violations as continuing violations, therefore each and every day is a new violation).

(2) Replacing green space with additional parking (increasing coverage). Increased parking destroyed green space and increased lot coverage and setbacks regulated in the CDO without zoning permit. See CDO §3.1.2(a)(5) and (12).

(3) Change of accessory use – garage (parking of vehicles) to private use of storage and maintenance repair shop. Premises requires 4 parking spaces for a duplex use. If storage and maintenance/repair shop were removed, the six space garage would meet the 4 parking space regulation and allow for two additional parking spaces. Change of use requires zoning permit. CDO §3.1.2(b)(3). Storage related to residents own use of property is accessory to the primary residential use. Storage for non-residents is not related to the residential use of the Property.

(4) Placement of trash receptacles. At time of site visit, receptacles were placed in front of the garage, in 2005 they were located on area within the “Parking Lot” area, now they are placed in front of the garage; relocation happened without zoning approval. See CDO §3.1.2(a)(17).

(5) Exterior storage.

Building materials placed on the southern boundary of Premises, larger than 16 sf. in area, This exterior storage requires zoning approval and is subject to coverage and setback regulations. See CDO §3.1.2(a)(5).

RECOMMENDATION:

Uphold Code Office’s determination that Premises is in violation with the CDO. We further ask that the Board condition Appellant to remedy the violations within 30 days of Board’s decision:

- (1) remove all parking along the southern boundary of Premises (as identified in photos below), restore green space, and place a landscaped barrier, to be reviewed and approved by Planning/Zoning staff, around the southern area to prevent future parking in this area.
- (2) Submit, for review and approval to Planning/Zoning, a plan for parking at Premises. Plan shall also include location of trash receptacles and exterior storage, and, if appropriate, screening and implemented within 45 days from Board approval.
- (3) Change of accessory use – garage. All storage and maintenance/repair shop shall be removed from structure within 30 days from date of DRB approval and its parking use (for tenants of Premises only).
- (4) Owner and/or assigns shall prohibit parking at Premises for anyone other than residents of Premises and their guests. Appellant shall incorporate wording into leases of adjacent property (ie. 12 Weston Street) language that prohibits tenants from parking at 18-20 Weston St.