

Burlington Development Review Board

149 Church Street, City Hall
Burlington, VT 05401

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Austin Hart
Brad Rabinowitz
Israel Smith
AJ LaRosa
Geoff Hand
Alexandra Zipparo
Samantha Tilton
Jim Drummond, (Alternate)
Vacant, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday December 5th, 2017, 5:00 PM Contois Auditorium, City Hall, 149 Church St, Burlington, VT Minutes

Board Members Present: A. Hart, B. Rabinowitz, I. Smith, A. LaRosa, G. Hand, A. Zipparo, S. Tilton

Board Members Absent: J. Drummond

Staff Present: Scott Gustin, Ryan Morrison, Layne Darfler, David White

I. Agenda

No changes

II. Communications

None

III. Minutes

A.Hart: Will act upon at end of meeting

IV. Consent

- 1. 17-1150CA; 3163 North Ave (RLW, Ward 7N) Elizabeth and John Shappy**
Concrete pad, deck, and seawall.
(Project Manager: Scott Gustin)

A. Hart: Has the applicant received and reviewed the staff report and conditions?
Confirmed

A.Hart: Does the applicant have any questions or comments regarding that report?
None

A.Hart: Do any member of the Board object to this item remaining as consent?
None

A.Hart: Are there any members of the public who wish to speak on behalf of this project?
None

A.Hart: We have already approved the pad and deck, tonight we are approving just the seawall?

S.Gustin: You are approving the entire project/application

G. Hand: Motion to approve and adopt staff findings

B.Rabinowitz: Seconds the motion

7-0-0

V. Public Hearing

- 1. 18-0463AP; 327 South Winooski Ave (RM, Ward 6S) John and Maria O'Brien**
Appeal Notice of Violation # 335339 relative to unpermitted site and building alterations.
(Project Manager: Jeanne Francis) (Bill Ward in place)

B.Ward: Director of Code Enforcement, stepping in for Jeanne Francis who is out on leave. Was witness in initial investigation and has been heavily involved in projects regarding this property. This particular property and process is peculiar because of its timeline. In April 2017 we received an anonymous complaint of a new door replacing a window on the second floor. City records state the building is over 100 years old, a 2 story single family home, built in 1899; Code Enforcement investigators witnessed the change, took photos of the issues and changes, a warning letter was sent in May of 2017. June 5th the property owner responded by applying for a zoning permit, owner submitted an incomplete application and there were six documented communications made by the Planning and Zoning office to the property owner to complete the permit application for the change to the second story window converted to a door and the addition of a deck on the second story. Ultimately the permit was denied. Denial information was in Jeanne's report but actual denial is important to consider. September 6th, 2017 denial was sent to the property owners, there was no appeal made regarding the denial. Code Enforcement waited another month to decide how they wanted to act, allowing the property owner time to act. Code Enforcement issued the Notice of Violation on October 20th. The appeal was received, the property owner appealed the Notice of Violation. That Notice of Violation pointed out the work done without permits as well as fence issues that were discovered during the investigation. A 1999 fence permit allowed for a 3' high picket fence around perimeter of property. Zoning permit approved was for picket fence, the existing fence is different than what was originally approved.

A.Hart: The existing fence is different than what was approved in the 1999 permit?

B.Ward: Correct. The new fence is not what was approved under the 1999 permit. A simple permit application could remedy this issue. Procedurally the property owner should have appealed the permit denial. Unless a permit is issued to accept the changes as is, the property owner needs to correct the violation. Jeanne Francis's conclusion in notice was to uphold the violation and ask the property owner to either return the property to its original condition, or get approval for the modifications to make it meet current standards. Work on the roof, second floor window changed to a door, and deck should not be there unless approved permit is on file which currently there is none. We are asking the DRB to uphold the violation.

A.Hart: Does the Board have any questions?

None

A.Hart: Part of the City's request is to dismiss the appeal as part of the appeal was incomplete. The submitted appeal told them next to nothing regarding what the appeal was, concerns and issues, or your argument for the changes. Part of this appeal and issue could have been avoided with cooperation and information sharing on the appellant's behalf.

J. O'Brien: Process was/is not easy, if it was known that there was more information needed it would have been provided. Was not aware the information was missing. Regarding the fence: would have never changed the fence but it was ripped down by sidewalk snowplow three years in a row and when we asked the City we were told the fence was too close to the sidewalk and suggested it be moved back. Admits the fence was changed and moved without permit. Emailed with zoning as he was informed the fence was too tall, then he received word that the fence was actually illegal and he would have to remove the entire thing.

A.Hart: The City's position was that you had a couple of options, take down the fence or apply for a permit for the changes to the fence.

J.O'Brien: Nowhere in paperwork stated that he had any options; Window to door change was mistake, but never received a denial for the submitted application. Denied because property is considered historical, but the surrounding neighbors made massive changes to homes that totally altered them. Why can they do that and my simple changes are a problem?

A.Hart: It is true if you do almost anything to the exterior of historical homes there is the Design Advisory Board that they have to go through. The City's goal is to preserve the historic character.

J.O'Brien: Wasn't aware of the process, victim of own ignorance. Just a home owner.

A.Hart: I think the easiest solution is for you to file a new zoning permit application with substantial changes made to show us the context about how you can do what you want to while preserving the historic character. A violation process is not the best way to deal with this issue. There are several chances for you to obtain process guidance during the process of permitting. Will accept that appellant was not aware but there are people in planning and zoning there to help guide through the process.

B.Rabinowitz: The fence issue is pretty straight forward. The fence isn't illegal or an issue, currently, it's just unpermitted. Denial was for what was built and changed on the home, chances are if he re-applies he will get denied again.

J.O'Brien: I would have the opportunity to get it approved if I could work with somebody.

G.Hand: If the denial was resubmitted, he wouldn't get approved

J.O'Brien: Believes he was denied due to lack of information

A.LaRosa: The application would have to show substantial changes to the nature of the application for the Board to reconsider a non-appeal denial.

J.O'Brien: I don't want to have to talk to attorney about this, this isn't a legal matter is it?

A.Hart: Unfortunately the procedural part is a legal matter

J.O'Brien: Thought this was the appeal

A.Hart: This is the appeal of the Notice of Violation, not the permit denial.

B.Rabinowitz: We see a lot of people who change something historic, denial was based on the historic character that is how this is perceived. The substance of the design is what would have to be different.

R.Morrison: Acted as project manager for the zoning permit application. Consulted with colleague who deals heavily with historic properties. Looked at application from standpoint of if it hadn't happened already. The conclusion was to deny because it was part of the historic structure and could be seen from public view. Colleague and he did not feel it was worth bringing to the Design Advisory Board. Had multiple communications with appellants wife, listed on zoning permit application as point of contact, about historic elements and that the neighboring addresses that were provided either had permits or that the changes the appellants questioned were recorded historically as having those features.

J.O'Brien: All neighbors have done huge changes to homes, removed doors and windows, added second floors, etc. so I don't understand. Was told that due to the historic value of the home that he can't do anything to it. That's what he just said, based on historical factor it was denied.

A.LaRosa: Our concern is that you're asking us to judge this based on merits. You asked Planning and Zoning to approve the permit in September, they denied it and you could have appealed that decision but chose not to. Chairman recommended that you reapply, but generally you cannot ask for the same thing twice. Therefore you must make a significant change to it to get another review or opportunity for approval.

J.O'Brien: Can I present it to you with a change?

A.Hart: If there is a substantial change to an application that has been denied it is possible, if it is the same thing than no.

J.O'Brien: Plans to alter the porch on the back of the house to expand kitchen to absorb the project in question.

A.Hart: In consultation with Planning and Zoning and Code Enforcement you may get through with an approval.

J.O'Brien: If you say I have to put it back than I will

A.Hart: Well you do have the right to file an application and then we will have to review it.

J.O'Brien: I wanted to tell you that I didn't want to review this as an adversary thing but received a letter stating that I would receive fines, didn't see any issue with what we did. Came here tonight to figure out what was going on.

A.Hart: There are people available to help you through the process. It is a complicated process but there are resources to help you.

I.Smith: That person is not going to be City staff; you need to confer with a design professional

J.O'Brien: Why?

I.Smith: City staff can interpret the ordinance and code but cannot guide your design choices as you are asking them to do

J.O'Brien: I can design myself but need assistance with nuances

A.Hart: Planning and Zoning has materials and guidelines on how to go through the process, but staff will not sit down with you and design it for you.

B.Rabinowitz: If you started with something and brought it to staff they can give feedback, if you disagree with what staff tells you.....

J.O'Brien: I wouldn't

A.Hart: Pending before us is an appeal of notice of violation. We don't want that hanging out there for a long period of time. From our point of view we need this resolved.

J.O'Brien: Will act upon immediately

A.Hart: Will B.Ward address the City's next steps

B.Ward: Think it is clear that it is a violation. Ask the DRB to uphold the violation, allow time for appellant to submit new application or provide a timeline for removal. Timeline to put back or bring in a substantially changed permit application. Page 2 in the Notice of Violation always provides a remedy. Remedy for the fence is written there and it is straightforward.

B.Ward: Really important with Zoning Permits is that there would have been a building permit following the approved zoning permit. The building permit would prove that the structure was built safe. There is no proof that the roof can handle the extra load.

B.Rabinowitz: So if we approve upholding the Notice of Violation and give language that within 30 days the appellant get the fence permit and file an application to address the removal or substantial changes that fits?

B.Ward: Obviously he will have his procedural time limits to appeal or address the decision, but 30 days is more than reasonable.

A.Hart: Closed the public hearing

VI. Other Business

1. Form Based Code Presentation

Presentation by David White, Director of Planning and Zoning

VII. Adjournment

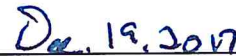
Meeting adjourned for deliberation at 5:45 PM

Reconvened at 5:47 PM

Meeting adjourned at 6:27 PM



Austin D. Hart Chairperson of Development Review Board



Date



Layne Darfler, Planning Technician



Date

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.