



CODE ENFORCEMENT OFFICE

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TO: Development Review Board

FR: Jeanne Francis, Assistant Zoning Administrative Officer,
Code Compliance and Enforcement

DT: March 24, 2017

RE: Report on **Appeal #17-0786AP**; Appeal of a Administrative Officer's Zoning Notice of Violation (ZV # 320536) issued on February 1, 2017, for Failure to obtain zoning approval for expanding parking south of existing driveway and southeast corner of rear yard, added gravel over compacted soil in the rear, and failure to obtain certificates of occupancy for ZP 92-196 and 07-428, for Premises Located at 220 Pine St, Burlington, Vermont

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.

Location: 220 Pine Street, Burlington, Vermont

Tax Lot # 049-2-007-000

Appellant: Nicholas/Deanna Papaseraphim

Applicable Regulations: CDO Articles 2, 3, 5, 8, 12 and VSA §4551

Appeal # 17-0786AP

Appeal: Sec. 12.2.2 Appeals of Administrative Officer Decisions

- Appeal filed at the Planning/Zoning office on February 15, 2017:

Name and address of appellant:

Nicholas Papaseraphim
27 Weathersfield Bow
Essex VT 05452

Brief description of the property with respect to which the appeal is taken
220 Pine Street

Reference to the regulatory provisions applicable to that appeal

Appellant left this section blank

Relief requested by the appellant

6 parking spaces, all existing parking.

Alleged grounds why such requested relief is believed proper under the circumstances

Pre-existing

Appellant Submittals

- Notice of Appeal with Notice of Violation

City's Submittals

- Photos, aerial photos, Google Earth

Background Information:

- Property listed with City as 2 family/2 rental units, 4 bedrooms, on a 4,430 sf lot.
- RM Zone
- Neighborhood Parking District
- On State Historic Structures, King Street District, Built 1899
- Ward 5
- Appellants purchased the property in 2012

- 1978 site plan, attached to zoning permit #78-214, shows a fence on the east and southern boundaries of property. A shed is shown on the southeast corner of property/ shed and southern fence have been removed. Driveway (w/o dimensions) is shown on plan but no specifics to parking.

- ZP 92-196: *Removal of two-story front facade porch, on existing duplex, with first floor landing constructed. Second story door, formally leading onto porch, to be filled-in to match existing. Structure listed on state list of historic structures and within King St. Neighborhood revitalization project. Proposal approved December 5, 1991, subject to conditions. A Certificate of Occupancy has not been issued for this permit. Permit states 4 parking spaces existed at time of proposal. Site plan included with zoning permit, dated November 4, 1991, illustrates an 840 sf triangular parking area (ie. 20'x84'x90').*

- ZP 03-537: *Jack up rear 25'X16' Section of building approx. 10-12 to level out. Install new concrete foundation under existing structure. Repair all affected areas,*

Floors, Ceilings, Walls, Windows. Any replaced siding, Windows, or other exterior repair work will match existing. No increase in coverage. Proposal approved May 22, 2003 subject to 2 conditions. Certificate of Occupancy issued November 17, 2003.

- ZP 07-428: *Replace front porch window with door. Replacement door shall match appearance of historic windows, that is, 2/3 glass 4 light wood door using existing casings.* Approved January 24, 2007 subject to 5 conditions. No Certificate of Occupancy to close out the permit has been sought.
- November 15, 2010 Code Office received an “expanded parking” complaint; area in which this violation occurred was in close proximity of the exterior door, south of the driveway; although parking in this area ceased, Owner failed to work with City to replenish lawn area damaged from the illegal parking and/or to install barriers to prohibit future parking in this area. This violation is recorded as “open” because Owner never replenished lawn area or installed a barrier. See attached photos.
- August 30, 2016 Code Office received an inter-departmental inquiry regarding parking at Property (tenant appealed a parking ticket); City Attorney’s Office dismissed the ticket as a warning because tenants (owner of vehicle) stated **landlord told tenants** that *where she was parked was one of the 3 designated parking spaces for the building.* Although the ticket was dismissed, tenant was informed that parking was not approved in the area where she was ticketed.
- September 13, 2016 notification letter regarding expansion of driveway/parking area without zoning approval mailed to Owner; Owner did not refute complaint. Parking was verified. See attached photo.
- 2012 and 2004 Google Earth aerials show a muddied back yard; current parking material is gravel.
- 2004 Google Earth aerial shows a fence installed along the east and southern property boundaries; fence (also shown on 1978 drawing filed with zoning permit request) has been removed allowing vehicles to access driveway of property to the south and then onto Pine Street.
- Currently parking at property is not organized and parking has been occurring south of the driveway. There are no assigned parking spaces. Entire back yard is graveled; with the entire back yard being graveled, that gives tenants the illusion parking is allowed in the entire rear yard.
- No zoning permits on file in the City to: expand the parking south of the driveway, in the rear yard, add site improvements that includes placing gravel over the previous permeable rear yard, and expanded parking equates additional coverage.

- To date a Certificate of Occupancy has not been issued for Zoning Permits #92-196 and #07-428; Appellant has recently requested a certificate of occupancy for each of the permits, however they both failed inspection.

Comprehensive Development Ordinance (CDO)

Article 2. Enforcement

Sec. 2.7.5 Observation or Complaints of Violations

... that have been taken.

The observation of a violation on the part of the administrative officer shall be considered an Investigation, and the alleged violator may be issued a notice of zoning violation or a municipal civil complaint ticket.

- Site visit indicated complaint was variable.
- Research of City records revealed there was no zoning permit on file to increase the parking area.
- Research of City records revealed there was no zoning permit on file to add crushed stone to the rear yard.
- Research reveals two open zoning permits.
- Zoning files disclosed an approved zoning permit in 1991 that included a site plan that included 850 sf of parking; parking was on the north side of the rear yard and connected with the driveway (see attached plan)
- Administrative officer determined violations were occurring at Property and issued a Notice of violation on February 1, 2017.

Article 3. Applications, Permits, and Project Review

Sec. 3.1.2 Zoning Permit Required

Except for that development which is exempt from a permit requirement under Sec. 3.1.2(c) below, 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:

(a) Exterior Work:

Onsite work, without zoning permits, includes the following categories:

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

- 12. New or expanded parking areas, driveways, and walkways. Including paving existing gravel surfaces...
- 16. Site improvements...
- City records show Appellant (and/or previous owners) did not obtain zoning approval for any violation cited in Notice issued on February 1

Article 5 Citywide General Standards

Appellant stated he will argue the 15+ year ordinance.

Article 5, Part 3: Non-Conformities

Sec. 5.3.2 “Bianchi” controlled uses, structures, and lots.

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the Bianchi decision, and the subsequent enactment of 24 VSA Sec. 4454, shall be considered violations that are not considered legal to any extent and shall in no event be granted the consideration or allowances of nonconforming structures, uses, and lots. Thus, no change, alteration, enlargement, and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city’s building inspector shall be permitted, except to a conforming use, structure, or lot.

- To date, Appellant has not requested a “determination permit” or submitted documentation to the City to prove the Property’s entire rear yard has been used solely for parking use continued for a consistent period of 15+ years. City records indicate there are inconsistencies over this time period.

Article 12. Appeals, Conditional Uses, Variances

- Sec. 17.1.3 (a).The appeal submission is incomplete. A brief description of the property, with respect to which the appeal is taken, a reference to the regulatory provisions, applicable to that appeal, the relief requested by the appellant, and the alleged grounds why such requested relief is believed proper under the circumstances, were incomplete when filing the appeal.

Summary

Appellants purchased this 1844 four-bedroom historic duplex in 2012. Structure is listed on state “list of historic structures” and within the “King Street Neighborhood Revitalization Project”, is within the RM zone in Ward 5 and sits on a 4,430 sf lot (according to Assessor records).

- ZP 78-214 was approved for the installation of a chain link fence and accompanied by a site plan dated November 4, 1991. That site plan illustrates an “unpaved” 40’x30’ sf parking area and a 40’ x 90’ sf paved parking area. NOTE: these dimensions are larger than later permit dimensions and City records.
- ZP 92-196 was approved for exterior changes. Zoning Permit indicates 4 parking spaces existed at time of proposal (this is an automated/program number because the ordinance required 4 parking spaces for a duplex – you will note Owner stated there were 3 parking spaces, and those 3 parking spaces were not verified.. Site plan accompanied with zoning permit dated November 4, 1991, illustrates an 840 sf triangular parking area, which is smaller than the 1978 site plan and which could not accommodate three vehicles in a 20’ wide area (20’ indicated on 1991 plan). Appellant has stated six parking spaces have existed consistently for a period of 15+ years; however, to date Appellant has not provided any documentation supporting his claim. The City has provided evidence the parking area changed between 2003 and 2004. ZP 92-196 has been executed, and Owner has recently requested a certificate of occupancy; however, project has failed inspection because it does not comply with approvals, including parking.
- Google maps from 2004 to 2016 shows the rear yard has changed over the years. The entire backyard was a muddied, rutted, dirt area with exception for the small grassy embankment between this property and property to the east. Today’s photos show the yard’s surface is now crushed stone (gravel). Attached photos, submitted by Owner for a 2003 zoning permit request, show there was grass in the back yard and there was a chain link fence separating this property with the property to the south. Maps and photos will show that between 2003 and 2004 the fence was removed, tenants began using southern neighbor’s driveway to access the rear yard of this property for parking, increased the parking area, and replaced grassed area with crushed stone. 2004 does not meet the threshold for a 15+ year statute of limitations for enforcement. There is no City record acknowledging or approving any of the changes noted above.
- Appellant has requested a certificate of occupancy for ZP 92-196 and 07-428, however projects do not comply with approvals, inspections failed.

CONCLUSION:

The City has provided sufficient evidence that violations noted in NOV #320536 dated February 1, 2017 are viable and occurred between 2003 and 2004 without zoning approval. Zoning permits 92-196 and 07-428 failed inspection and discrepancies have not been corrected to date.

The City, under the auspices of the Zoning Administrator, thereby requests the Development Review Board to uphold their decision that violations cited under NOV #320536 are viable and continue at said Property and condition the following:

1. Owner shall immediately cease and desist any and all parking beyond the parking illustrated on the 1991 site plan. Any violation of this condition shall constitute issuance of Municipal Tickets to the Owner with fines of \$100 for the offense, \$150 for the 2nd offence, and \$250 for the third offense. After the third offense, City will seek fines under the judicial process, as allowed for by law (ie. up to \$200/day).
2. Owner shall remove all the “crushed stone” placed in the rear yard and replace it with green space (grass). Currently the two parking spaces atop the driveway do not contain crushed stone and the crushed stone removed from the rear area shall not be distributed to these two parking spaces without prior zoning approval. This condition shall be met by June 1, 2017.
3. Owner shall install a barrier, subject to Asst. Zoning Administrative Officer review and approval, to be placed south of the parking spaces and along the SE boundary of the Property (SE corner of house and connect with existing chain link fence to the east). Barrier shall be of a durable material to prevent future encroachment into the green space. This condition shall be met by June 1, 2017.
4. Owner shall reestablish the green space south of the shared driveway by June 1, 2017. Owner shall maintain all green space on the property.
5. Owner shall submit a complete zoning permit application to meet condition #3 above prior to May 5, 2017.
6. Flowering shrubs and bushes are suggested in low-light areas that prevent grass from growing.
7. It is suggested Owner move trash and recycling receptacles north of the parking spaces.
8. Owner shall obtain compliance with ZP 92-196 and ZP 07-428 by May 5, 2017. Compliance, if appropriate, may include a new zoning permit. NOTE: fees for a new zoning permit will be doubled or tripled, as allowed by ordinance.
9. Owner may enter into an Agreement with the City that would incorporate the above conditions, perhaps modifying deadlines, and would require an administrative fee.