

Department of Planning and Zoning

149 Church Street

Burlington, VT 05401

<http://www.burlingtonvt.gov/PZ/>

Telephone: (802) 865-7188

(802) 865-7195 (FAX)

*David E. White, FAICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, Senior GIS/IT Programmer/Analyst
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Layne Darfler, Planning Technician
Vacant, Zoning Clerk*



MEMORANDUM

To: Development Review Board

From: Mary O'Neil, AICP, Principal Planner

Date: June 19, 2018

RE: ZP18-1007AP, Appeal of Zoning Determination re: permit expiration for ZP13-0680CA/MA, 110 Riverside Avenue.

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.

Project Number: ZP18-1007AP (ZP13-0680CA/MA)

Address: 110 Riverside Avenue

Zone: NAC-R **Ward:** 1

Date application accepted: Original application: December 20, 2012

Letter issued re: Expiration of zoning permit: April 11, 2018

Applicant/ Owner: Sisters and Brothers Investment Group LLP / Joseph Handy, represented by David H. Greenberg.

Request: Appeal of administrative determination that ZP13-0650CA/MA is expired. The original permit was issued in July, 2013.

General background for 110 Riverside Avenue:

(See below for specific timeline of ZP13-0650CA/MA)

- **ZP 13-0129; Sketch Plan** review of project. Reviewed by DRB September 18, 2012.
- **Zoning Permit 05-065SN;** 4' x 6' parallel sign for M & H Auto. Approved August 2004.
- **Zoning Permit 04-314;** Increase number of display cars from 25 to 45 and decrease 10 spaces for repair business to 6 spaces. Approved January 2004.
- **Zoning Permit 01-318 / COA 097-029;** Installation of a new non illuminated parallel sign over the entry of the existing used car sales establishment within the existing commercial complex. No change in use. Approved February 2001.
- **Zoning Permit 99-362;** Change of use from vacant commercial to auto and light truck repairs. No exterior changes proposed to the structure. Site currently contains a used auto dealer. Approved March 1999.
- **Zoning Permit 99-419 / COA 097-029B;** Installation of a non illuminated freestanding sign for the existing auto and light truck repair facility. Approved April 1999.

- **Zoning Permit 99-570 / COA 097-029C**; Installation of two signs for the existing auto repair facility. Approved June 1999.
- **Zoning Permit 98-311 / COA 097-029**; replacement of existing sign faces at existing auto sales building. Approved January 1998.
- **Zoning Permit 98-310 / COA 097-029B**; Change of use from retail (see COA 97-029) to used car sales. Maximum outdoor storage of 25 cars. Approved January 1998.
- **Zoning Permit 97-460 / COA 097-029A**; Partial demolition of the existing structure and parking area to facilitate improvements included in COA 97-029. Approved May 1997.
- **Zoning Permit 97-274 / 097-029**; Renovation to the existing commercial complex, addition to create multiple retail storefronts. 1987 net new square feet. Approved January 1997.
- **Zoning Permit 88-031**; one internally illuminated aluminum sign. Approved August 1988.
- **Zoning Permit COA 87-199**; Convert building to auto body shop; minor exterior work. Approved January 1988.
- **Zoning Permit 87-746 / COA 87-199A**; install one sign. Approved April 1988.
- **Zoning Permit 85-491**; construct a chain fence 4' to run along the west boundary of the property. Approved October 1985.
- **Zoning Permit 84-446 / COA 84-118**; Remove front wall of plate glass and replace with 2 x 6 frame, insulate and finish exterior with vinyl siding. Install thermopane picture window. Approved September 1984.
- **Zoning Permit 84-328 / COA 84-088**; construct 30 x 30' one story building to be used as a repair shop to replace a building of the same size and use that was destroyed by fire 4 months previous. Approved July 1984.
- **Zoning Permit 82-546**; parallel sign for "First Quality Carpets." Approved December 1982.
- **Zoning Permit 82-525**; To establish a floor covering and home decoration store. Prior use was a furniture store. Approved December 1982.
- **Zoning Permit 82-344 / COA 82-75**; Change pitch of roof. July 1982.
- **Zoning Permit 82-337 / COA 82-73**; establish use as a building supply and material retail outlet – dealing in hot tubs and plumbing fixtures for residential installation. 1000 sq ft devoted to retail use. Approved July 1982.
- **Zoning Permit 81-292**; Change of use from automobile retail business into a furniture retail business. No structural alterations. Approved December 1980.
- **Zoning Permit 78-162**; Used car sales, service and repair. Build partitions and 3 phase electric power in order to create car painting stalls in existing large garage. No additional coverage. Paint shop presently exists in the small garage at 110 Riverside. Issued October 1978.
- **Zoning Permit 75-891?** ; Erect a pylon sign flat against the building. May 1975.

- **Zoning Permit**, erect a 30' x 60' addition on the north side of the existing garage and remodel the front of the showroom. Issued August 1971.

Permit review for ZP13-0650CA/MA, Proposed 57-unit residential building with associated underground parking.

Technical Review	August 9, 2012
NPA meeting	September 12, 2012
Sketch Plan by Development Review Board	September 18, 2012
Formal application	December 20, 2012
Review by Conservation Board	January 7, 2013
Review by Design Advisory Board	January 8, 2013
Review by Development Review Board	February 20, 2013
	March 19, 2013
	April 2, 2013
EPSC and Stormwater approval	March 12, 2013
Decision by Development Review Board	April 23, 2013 Approved with conditions
Request to re-open hearing (reconsideration of Conditions #2 and 9.)	June 18, 2013 Public hearing
	July 2, 2013 Approved with conditions
	(33 conditions, 20 Prior to release)
Time Extension (DRB) One-year	One Year time extension approved June 3, 2014
Act 250 application	June 29, 2015
Act 250 Decision	July 21, 2016
2nd Time Extension (DRB) One-year	Approved July 25, 2016
Pre-release conditions met	July 25, 2017
Permit picked up	July 28, 2017

Overview: The owner of 110 Riverside Avenue has held a valid zoning permit for development at 110 Riverside Avenue since July 2, 2013. The DRB issued two one-year extensions, and additional time was afforded by the delay in application for the Act 250 permit, which was issued July 21, 2016. Standards of the Comprehensive Development Ordinance require that project development begin within the first year, and the project is completed within two unless a differing timeline is approved by the Development Review Board. The applicant did not commence the project within one year of permit approval (as extended), and therefore has foreclosed the opportunity to exercise the work afforded in the permit.

Recommended motion: Denial of appeal, and uphold Administrative Officer’s determination that Zoning Permit ZP13-0650CA/MA has expired.

I. Findings

Article 3: Applications, Permits and Project Reviews
Section 3.2.9 Zoning Permits
(d) Time Limit on Permits

Notwithstanding (e) and (f) below, a zoning permit shall become invalid unless the work or action authorized commences within on (1) year after the date of final decision. All work or action authorized there under shall be completed, and a Final Zoning Certificate of Occupancy received, within two (2) years of the date of decision unless a written extension of time not to exceed one (1) year is granted in advance by the administrative officer. Extensions of time for a zoning permit issued in connection with a conditional use or variance shall require approval by the DRB after a public hearing.

Zoning approvals were issued April 23, 2013 and July 2, 2013 (re-opened public hearing). A DRB one-year extension was given June 3, 2014, and a second one issued July 25, 2016. One year from that final date of approval is July 25, 2017. Although the applicant met his prior-to-release conditions on that day, the permit was not picked up, building permits were not sought or issued, and the project had not commenced by that date. **Adverse finding** for project commencement within one year of approval.

(f) Exceptions to Permit Time Limits

Except for projects subject to additional state or federal permitting jurisdiction, or which have been appealed to Vermont Environmental Court pursuant to the requirements of Article 12, there shall be no exceptions to the time limits specified in Section 3.2.9 (d) and (e) unless longer or shorter time limits are specifically imposed as permit conditions of approval by the DRB at the time of approval.

The applicant did not request phasing in any of this application materials to the DRB. The project approval was issued with the standard one-year commencement; two year permit life identified in (d), above. Under the second time extension, the DRB specifically articulated that there would be no further time extensions, and directed the applicant to begin and complete the project as approved.

For projects subject to additional state or federal permitting jurisdiction, the date of decision shall be deemed to be the latest date of the decision of the state or federal permitting authority. For projects under appeal pursuant to the requirements of Article 12, the date of decision shall be deemed to be the date of the decision adjudicating such appeal.

Zoning Permit 13-0650CA/MA was subject to state permitting under Act 250. That application submission for Act 250 was not submitted by the applicant until June 29, 2015, almost two years after the issuance of the original municipal zoning permit. The DRB, in review for a requested time extension, observed this delay and counseled the applicant to avoid any further efforts to extend time allowances.

The Act 250 decision (which would toll the approval date, per this standard) was issued July 21, 2016, just four days prior to the DRB final extension of July 25, 2016. As the most recent decision becomes the date of approval, the project had to commence within one year of July 25, 2016 and be completed within two years (July 25, 2018.) The development had not commenced by demonstration of picking up the zoning permit, seeking necessary trades permits, or evidence of construction site work by July 25, 2017.

The zoning permit was picked up July 28, 2017; after the one-year requirement. Not having commenced construction, it is unlikely that the entire development could have been completed by July of this year, a further requirement of this standard. **Adverse finding.**

FY2018 Fee Schedule

Counsel for the applicant requests return of fees paid to the Planning and Zoning Office July 25, 2017. The FY2018 Fee Schedule is annotated in Bold Print:

ALL FEES ARE NON-REFUNDABLE

On the bottom of the page.

Adverse finding for request to return fees.

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