

Miscellaneous Appeal - Enforcement – DRB Staff Comments



City of
Burlington, Vermont
149 Church Street

ZP #: 17-0952AP

Tax ID: 045-2-251-000

Application Date: May 16, 2017 Appellant: Soon Kwon

Property Address: 41 SOUTH WILLARD STREET

Applicable Regulations: 2, 3, 4, 5, 12, 13 and 24 VSA 4451

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.

Description of Violation: Expansion and alteration of rear parking area resulting in increased lot coverage without approved zoning permit. Occupying dwelling units inconsistent with the CDO Family Definition (Articles 4 and 13). Projects approved and completed under ZP 07-314CA and ZP 07-333CA failed zoning certificate of occupancy inspection (no certificate of occupancy issued for these projects). Also, elevation changes to the building without zoning permit approval.

Appeal: Sec. 12.2.2 Appeals of Administrative Officer Decisions

Name and address of appellant:

Soon Kwon
PO Box 9492
S. Burlington, VT 05407-9492

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

None given in appeal application.

Reference to the regulatory provisions applicable to that appeal

None given in appeal application.

Relief requested by the appellant

None given in appeal application.

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

See attached

City's Submittals

- Notification Letter Dated November 17, 2016
- Notice of Violation Dated March 29, 2017
- Photos of Property
- Site Plan Approved on April 2, 2006
- Site Plan Dated September 15, 2008 submitted by Appellant
- ZP 07-314CA w/conditions
- ZP 07-333CA w/conditions
- City Attorney's Letter re: Occupancy in RH District

Background Information:

- RH Zone
- Duplex with 12 bedrooms.
- Structure on Federal Registration List
- Neighborhood Parking District
- March 28, 2016 Notice of Violation: Unpermitted parking on north side of house. Appealed to Environmental Court Docket No. 66-7-16 Vtec.

FINDINGS

2006 Approved Site Plan discrepancies (see attached photos) include:

1. Three-car parking area* on southern border of Property (hereinafter referred to as "southern parking"); up to nine cars have parked in this area.
2. Three-car parking area* east of garage, including vehicles parked in close proximity of the rear of the building (hereinafter referred to as "eastern parking"); up to five cars have parked in this area.
3. A parking barrier of three dwarf shrubs east of the "southern parking area" are missing as well as shrubs along the southern boundary of parking area (see ZP 07-333CA site plan).
4. Parking has increased west of the southern parking area (see photos);
5. Parking has increased south of eastern parking area (garage) (see photos).
6. Current trash receptacle location does not have zoning approval (see attached photos);
7. Parking has been occurring west of the house; there is no approval for parking in this area; (see attached photos).
8. Green space west of the southern parking area and south of the eastern parking area has been damaged. Lot coverage increased without zoning approval (see attached photos).

*Site plan approved November 2, 2006 shows a specific parking area but does not include dimensions. In a September 15, 2008 document from Owner (attached to ZP 09-243 requesting an increased in living space) includes a parking layout which shows 3 vehicles along the southern boundary and 3 vehicles east of the garage.

Expanded/illegal parking at this property has occurred since 2003. Appellant attempted to remedy the parking violations through the years but has not been successful; attempts have been adequate and the Appellant does not maintain remedies. Parking violations on the Property include the front lawn, along the north side of house, in front of the garage, close proximity to the stair tower, south of garage, and along the southern boundary of Property. The Notice of Violation issued for parking along the north side of the house and front lawn are currently in litigation.

See attached photos for parking along the front of the garage (as many as five (5) vehicles), south of the garage (as many as 2 vehicles), south boundary as many as 7 vehicles), and in close proximity of the stair tower (up to 3 vehicles). ; see photo dated November 17, 2016 vehicles (layout of parking drawn by Owner dated September 15, 2008, shows three 9'x18' parking spaces in front of the garage (east parking), although 3 parking spaces in front of this two-car garage blocks the ramp along the southern elevation of the garage; currently garage contains storage. Same 2008 drawing shows three 9'x18' parking spaces six feet north of southern property line, aligning with the edge of main building.

Appellant argues parking is “only a problem during winter”. Attached photos will show parking violations all year long. The ordinance allows parking on front lawns during the “winter storm ban” to get cars off the street, but does not allow “illegal” parking on private properties. As you can see in the attached photos taken after Appellant’s November notification letter, parking violations continued. After Appellant filed his appeal on April 12, 2017, attached photos will show illegal parking still continued. Photos will show after Appellant submitted his zoning request to modify the parking area, parking still continued outside the parking area.

Appellant attempted to cure the violation by applying for a zoning permit to increase the “south parking area” on April 12, 2017; however, the submission is incomplete, and, to date, Appellant has failed to submit a complete application.

Occupancy:

Zoning records show six approved bedrooms in each unit, for a total of 12 bedrooms; City Minimum Housing (a.k.a. Code Enforcement Office) records show each bedroom is occupied by an unrelated adult; Appellant signed a form when registering his units and he stated on the form there are six bedrooms in each unit at 41 So Willard Street occupied by unrelated adults. Appellant does not contest that there are more than four unrelated adults in each unit, but argues the RH zone is exempt from the “Functional Family Rule”.

The City Attorney’s Office issued a memorandum re: Four unrelated in the RH Zone: *On November 26, 2012, ZA #13-01, Amendments related to Residential Occupancy Limits in RH District was passed. The amendments revised the language in §4.4.5(d)(5)(C) to remove “exempt the RH district”. It now reads, “In all residential districts the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

Grandfathering is not automatic: The property owner would need to show that occupancy of a single-family house by five or more unrelated adults was legally in place prior to the adoption of the ordinance amendments that made it non-conforming.

To date Appellant has not requested a determination for grandfathering, however, currently, occupancy includes six unrelated adults in each unit. ZP 09-243CA, approved an additional bedroom in the upstairs unit (for a total of six bedrooms for that unit) on September 23, 2008; six bedrooms for the upstairs unit only existed since 2008.

Certificates of Occupancy (CO): ZP 07-314CA

Replace three windows on third floor with larger egress windows to meet code requirements.

Owner requested a CO for ZP 07-314CA on January 11, 2011 and failed inspection. On January 14, 2011 Owner was issued a Temporary Zoning Certificate of Occupancy for permit 07-314CA with an expiration date of July 13, 2011 to complete project as approved. Permit expired and on February 8, 2012 Code Enforcement contacted the Owner and reminded him that the temporary CO had expired. Owner replied that the project was finished, and on February 15, 2012 he submitted a new CO request; project failed inspection again. On September 20, 2016, a reminder letter that project approved under ZP 07-314CA has not been issued a CO; Owner has failed to respond to letter or obtain CO approval as of this date.

Certificates of Occupancy (CO): ZP 07-333CA

Plant 2-3 dwarf evergreens as a parking barrier. Restore the wooden walkway connecting the parking area to the garage entrance (6 ft x 6 ft landing and 3 ft wide walkway.)

Appellant requested a Certificate of Occupancy for ZP 07-333CA on January 11, 2011 and failed inspection. A Temporary Zoning Certificate was issued on January 14, 2011 for 180 days. On February 15, 2012 Appellant submitted a new CO request; project failed inspection again. A renewed temporary was issued which expired on July 13, 2012. To date project fails to comply with the 2006 approved site plan. The three shrubs were requested as part of the project as a remedy to address parking violations on the southern parking area, therefore, shrubs shall be planted or another mechanism to prevent parking encroachment shall be proposed.

West Elevation changes:

T-111 siding has been added to rear (west) stairwell without zoning approval.

Issue has been resolved, an "As Built" drawing was accepted.

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, and the relief requested by the appellant have not been filed with the Appeal.

Summary

Parking at this property has been an issue for many years. Currently the illegal parking on the north side of the building and front lawn are being litigated. Parking for the south lot has expanded

to the east and west. Appellant submitted an incomplete application to modify the surface parking area on April 12, 2017, however, the submittal was incomplete, Appellant has been notified the application is incomplete, and to date, a complete application has not been submitted, thus leaving a rutted, damaged lawn caused by illegal parking. Appellant argues parking problems only occur in the winter, however, photos show expanded parking is visible in the summer, fall, winter when there is no snow on the ground, and spring. He states leases for the two rented units allows three parking spaces for each unit – that would coincide with the site plan Appellant “clarified” in 2008. It is Appellant’s responsibility to ensure the property coincides with the CDO.

Currently there are 12 bedrooms in the rental building; the 12th bedroom was approved under ZP 09-243. Appellant registers 12 unrelated adults in the structure. Appellant argues the “Functional Family” ordinance does not apply to his rental because the rule does not pertain to his zone (RH). *On November 26, 2012, ZA #13-01, Amendments related to Residential Occupancy Limits in RH District was passed. It is the written decision of the City Attorney’s Office that rentals with more than 4 unrelated tenants shall comply with the Family Definition or request a grandfathered determination; one bedroom was recreated in 2009 and Appellant has not requested a grandfathered determination.*

There are two outstanding zoning permits that Appellant requested a certificate of occupancy for, but the inspection failed; Appellant was notified a few times that the inspection failed and temporary zoning certificate of occupancy had expired. These two issues may be resolved as noted in above Findings.

Conclusion:

We ask that the Board uphold the Zoning Administrator’s determination that a violation exists and direct the Appellant to comply with the March 29, 2017 notice of violation remedy options, and, in particular, the site plan approved on November 2, 2006 and include the following conditions:

1. Unless ZP 17-0953 proposal to *modify surface parking area* is approved by June 12, 2017, Appellant shall construct a parking barrier, anchored to the ground and subject to Zoning Administrator’s approval, by June 13, 2017. Barrier shall enclose the parking area shown on the 2006 site plan on three sides (east, south and west).
2. All lawn area damaged by the illegal parking shall be restored; areas not identified as “parking area” on the 2006 site plan. Restoration shall occur as adopted from the draft 2016 Vermont Stormwater Manual Soil Depth and Quality Specification:
 - a. Subsoils below new topsoil layer (i.e. – existing compacted soils) scarified/tilled at least 4”, with incorporation of upper material (so total depth of final un-compacted material = 8”. The entire surface should be scarified/loosened EXCEPT within drip line of trees (to protect roots).
 - b. Minimum 4” topsoil except where tree roots limit amendment incorporation
 1. Topsoil shall have minimum 5% organic matter by dry weight (may need to add compost to achieve).
 2. Soil portion must be sand or sandy loam
 3. Water or roll to 85% compaction
 4. Rake to level
 - c. Seed and protect with erosion control matting (staked according to manufacturers’ specifications).

3. Shrubs, at least 3' in height at time of planting and 3' OC, shall be planted on the around the barrier to screen parking area from residential neighbors.
4. Location of trash receptacles shall receive zoning approval.
5. Appellant shall reduce number of tenants to four or less unrelated adults, comply with the Family Definition of the CDO, or request a grandfathering determination from the Zoning Administrator, by June 12, 2017.
6. If "As Built" approval is not granted for ZP 07-314CA by June 12, 2017, Owner shall install muntins to the windows by June 12, 2017, as conditioned; a Unified Certificate of Occupancy shall be issued once this condition is met.
7. Condition #3 above shall satisfy the requirement for ZP 07-333CA and once shrubs are planted, a Unified Certificate of Occupancy will be issued for ZP 07-333CA.