



City of
Burlington, Vermont
149 Church Street

Miscellaneous Appeal - Enforcement – DRB Staff Comments

ZP #: 17-1267AP

Tax ID: 023-4-026-001

Application Date: June 9, 2017

Property Address: 43 STARR FARM ROAD

Note: These are staff comments only; decisions on appeals are made by the Development Review Board, which may uphold or overturn Administrator's decision. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Description of Violation #334328: Expansion of parking area (lawn parking) without Zoning Approval. Placement of storage containers, and increasing lot coverage without Zoning Approval. Also, failure to obtain a Certificate of Occupancy for ZP 93-147, 93-084, 97-488, 01-227, 03-495, and 13-0177.



Appeal of ZV # 334328: Sec 12.2.2 Appeals of Administrative Officer Decisions

Name and address of appellant:

Kindred Transitional Care and Rehabilitation d/b/a Birchwood Terrace
43 Starr Farm Road
Burlington, VT 05408

Brief Description of the property with respect to which the appeal is taken:

144-bed skilled nursing facility, located on the corner of North Avenue and Starr Farm Road. The facility comprises of 40,570.5 square feet and sits on parcel ID #023-4-026-001. The facility has residential properties directly to the South and West. The Flynn School directly across the street to the North, and North Avenue is adjacent to the property lines to the East.

Reference to the regulatory provisions applicable to that appeal:

According to the Notice of Violation, regulatory citations include CDO Articles 2, 3, 5, 12, and 24 V.S.A. §§ 4451-4452.

Relief requested by the appellant:

The appellant states that, as a preliminary issue, the Notice of Violation ("Notice") is procedurally defective in that it imposes deadlines for the submission of proposals for curing the alleged violations, including zoning approval, which are practically impossible to meet.

According to the Notice, Appellant was given (7) days from the date of receipt to “cure the violation”. The Notice was not received by Appellant until Thursday, June 1, 2017, because it was inadvertently mailed or delivered to a different facility, Starr Farm Nursing Center, which as a separate address and management. By that time, the opportunity for bringing the property into compliance with the CDO and obtaining approval from the City in the form of a “Stipulated Agreement” – as indicated in the Notice – had essentially expired. Moreover, the Notice states that Appellant’s deadline for submitting a proposal and timeline for bringing the property into compliance was May 25, 2017 – however, that is the same as the “Decision Date” set forth on page 2 of the notice. Birchwood Terrace, therefore, had no reasonable opportunity for submitting a timely proposal or timeline and has been deprived due process.

At present, Appellant is in contact with Jeanne Francis and Scott Gustin regarding a possible plan for compliance and stipulated agreement. However, Appellant has been informed by Mr. Gustin that he will not conclude his review of issues concerning compliance until after the June 9 deadline for filing a notice of appeal has expired.

Appellant is hopeful that a stipulation can be approved by the City, but to preserve its rights under the CEDO, respectfully submits this appeal. Because of defects in the method of service of the Notice and time for appeal, Appellant has been denied due process.

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

The appellant asserts that, due to the above-stated reasons, Appellant has been denied due process and is not prepared to contest the merits of the City’s allegations.

As a practical matter, Appellant agrees that additional, approved parking spaces are needed at the facility to accommodate patient, staff, and visitors. Appellant believed – albeit mistakenly based on communications with the Department of Public Works – that the overflow parking was not a violation of City regulations. Appellant is also aware that some of the alleged parking violations are due to overflow from the neighboring Flynn Elementary School, and Appellant is working to address this issue.

Appellant is also working on a proposal for the alleged storage container violations. These containers house important medical supplies used by patients of the facility. Appellant is exploring the possibility of relocating the supplies and removing the containers. Given Appellant’s ongoing communication with the City and attempt to reach a Stipulated Agreement, and considering the due process concerns raised by the defective Notice, this matter is not yet ripe for consideration by the DRB.

Appellant’s Submittals:

- Appeal

City’s Rebuttal:

Attorney Macllwaine argues his Clients were not given ample time to cure the violation due to the lateness in receipt of the Notice Dated May 18, 2017. City rebuts 24 V.S.A. §4451. *Enforcement; penalties allows the alleged offender at least seven days’ warning notice by certified mail.; certified mail*

was received at Corporate Headquarters on May 31, 2017 and the Burlington Office received the first class mail on May 25, 2017, thus giving Owner until June 2, 2017 to appeal the decision or until June 7, 2017 to rectify the violation. As required by Statute the notice was mailed to Owner of record at address provided for in land records (ie. Phoenix, AZ) and included language outlined in in24 V.S.A. §4451 and repeated in CDO Sec. 2.7.7 (b). Director Demario of Starr Farm Nursing Home, Burlington Office, responded to the Notice on June 1, 2, 5 and left voice messages. On June 6 Code Enforcement staff spoke with Ms. Demario and reminded her of the deadline to file an appeal; Ms. Demario said her facility was interested in entering into an Agreement with a proposal in which to cure the violation within a time certain; Attorney MacIlwaine submitted an Appeal to the Planning/Zoning Office on June 7, 2017 to reserve their appeal rights.

Owner, through their attorney, has worked with the City on an Agreement in which to bring the Property into compliance with the CDO. That agreement; however, has not been finalized. As a result, the appeal is moving ahead.

INVESTIGATION:

Planning/Zoning Records:

- 08/24/1992: Basic Permit: Removal of 380 feet of chain link fencing. Replacing with 380 feet of 3.5' high scalloped picket fence. Permit Indeterminate
- 10/08/1992: Basic Permit: Installation of an 8'x10' storage shed and fencing (210 feet total length) behind the daycare building. Permit Indeterminate
- 05/20/1997: Basic: Installation of one non-illuminated parallel sign measuring 107x20 with an additional 23x17 logo for the existing nursing home. Permit Indeterminate
- 11/14/2000: Basic: Replace the existing glass canopy with a larger (longer to cover the existing sidewalks to both parking lots). Canvas canopy for the existing nursing home. Canvas canopy to be attached to the main structure and supported with columns. Permit Indeterminate
- 04/03/2002: Basic: Construct 19'x19' Pavilion for the Alzheimer's unit at Birchwood Nursing Home. Permit Indeterminate.
- 06/17/2003: Zoning Permit COA Level II: Install one 40kw emergency generator with sheet metal weather enclosure in the loading dock area on northwest corner of building. Install one 80 kw emergency generator with sound attenuated weather enclosure on south side of building. Permit Indeterminate.
- 08/13/2010: Zoning Permit COA Level II: Create two courtyards, walkway, storage shed, gazebo, fence and landing. FCO Issued
- 10/19/2010: Zoning Permit COA Level I: Install four wall mounted LED light fixtures on side and rear of building.
- 04/23/2012: Zoning Permit Signs and Awnings: replace existing non-conforming parallel sign with new sign face for Kindred Transitional Care and Rehabilitation. FCO Issued
- 08/13/2012: Zoning Permit Signs and Awnings: Replace panel on existing freestanding sign with new sign for Kindred: Permit Indeterminate
- 09/15/2014: Zoning Permit COA Level II: Replace existing access ramp with new larger ramp. Ramp is enclosed at connection to building. FCO issued.

Department of Public Works Records:

- August 3, 1982: Alter existing roof by replacing existing flat roof with a pitched roof toward center. Closed.
- July 9, 1985: Remodel interior, alter exterior entrance. Closed.
- December 1, 2000: Replace glass canopy with new canvas canopy. Closed.
- April 23, 2002: 19 ft. by 19 ft. outdoor pavilion. Issued.
- May 3, 2005: Install roof curbs and minor carpentry and dry wall in patient rooms for PTAC installation. Pending review and approval of building inspector. Closed.
- July 28, 2010: Create two courtyards, 10x16 storage shed (sits directly on grade), 12x12 gazebo (4 inch pad supported by 8 inch saunas at each corner), 100 ft. of vinyl stockade fence, physical therapy training platform and new exterior door with automatic closer. Closed.
- August 31, 2010: Interior remodel of existing kitchen, office and therapy area to include new cabinets floor covering, patch and paint. No change in use of the existing structure and no increase of living space. Closed.
- April 9, 2014: Install half wall w/half door (4 ft. metal stud w/sheetrock) for security purposes. Closed.
- October 22, 2014: Respective to IBC and NFPA 101, remove existing exterior ramp and vestibule and install new concrete ramp, embedded handrails and enclosed vestibule. New windows and automatic doors. All to be ADA compliant. Closed.

Assessor's Records:

Owners:

Ventas Realty LD; c/o Altus Group US Inc #559
21001 N Tatum Blvd Suites 1630-630
Phoenix, AZ 85050

- Zoning District – Residential Low Density (RL)
- Taxed as Commercial
- Parcel ID: 023-4-027-001
- Built in 1965
- Gross Floor area 96,196 sf
- Finished Floor Area: 47,822 sf
- Unfinished basement: 16,463 sf
- Gross Area: 96,196 sf
- Finished Area: 47,822 sf
- Enclosed porch: 108 sf
- #Units: 160
- Bedrooms: 320
- Baths: 80 full and 4 half

OVERVIEW:

- As of June 9, 2017, Appellant believes they have been denied due process and is not prepared to contest the merits of the City's allegations.
- Appellant agrees that additional, approved parking spaces are needed at the facility to accommodate patient, staff, and visitors.
- Appellant also believes some of the alleged parking violations are due to an over flow of parking at the school located across the street.
- City believes the notice was issued timely and in accordance to State Statutes.
- City believes additional approved parking is needed at the facility.
- City counters Appellant is responsible for their own property and if overflow parking from the school is occurring, they need to take their own enforcement.

FINDINGS:

Currently the Property does not comply with the Site Plan approved on July 17, 2003, which includes parking spaces and location. To date, Appellant has not requested a Certificate of Occupancy for permits noted in the Notice of Violation.

Appellant has attempted to cure the violations with an Agreement, however, to date, an Agreement has not been executed.

To date, City continues to receive parking complaints at the Property.

CONCLUSION:

Code Enforcement Office asks the Board to recognize zoning violations at Property and instruct Appellant to execute an Agreement with the City to resolve the violations by November 30, 2017.