



Department of Permitting and Inspections

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TO: Development Review Board

From: Ted Miles,
Department of Permitting and Inspections

Date: August 14, 2020

RE: Report on **Appeal #21-0080AP**; Appeal of an Administrative Officer's Zoning Notice of Violation (ZV #380819) issued on July 6, 2020, for Vacant land being occupied and claimed as legal residence without a zoning permit at the property of 111 North Cove Rd, Burlington, Vermont.

Note: This is the Administrative Officer's report; decisions are made by the Development Review Board, which may overturn or uphold the Zoning Administrator's Decision. **THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Location: 111 North Cove Rd, Burlington, Vermont

Tax Lot # 020-3-024-000

Appellant: Jacob Schumann

Representative: Jacob Schumann

Applicable Regulations: CDO Articles 2, 3, 4, 5, 12 and 24 VSA §4451

Appeal # 21-0080AP filed on July 23, 2020.

Violation:

1. Permitted shed converted to a dwelling unit.

- A. This property is in a Residential- low density Waterfront zoning district. The building is a permitted shed that has been converted to a dwelling unit without a zoning permit.

CDO Article 2. Enforcement Timeline

1. February 7, 2020- Zoning complaint received in regards to “parcel zoned and taxed, (assessed), as vacant land. Now being occupied and claimed as legal residence inconsistent w/prior zoning and permitting history.”
2. February 24, 2020- Went to property to investigate complaint. Met owner, Jacob Schumann on the deck attached to the building. Explained to the owner why I was there, that being our office received a complaint about the property being claimed as a residence when the only permit for the property is for two sheds. I explained that the occupancy of the shed as a residential dwelling unit did not have a zoning permit and that a zoning permit is required for the use.
3. July 6, 2020- Confirmed with the water department the water usage. The usage was consistent and constant since February 2020.
4. July 6, 2020- Notice of violation was mailed to owner of property for shed being occupied as a residential unit.
5. July 23, 2020- Received appeal of notice of violation for converting a shed to a dwelling unit without a zoning permit.

Background Information:

- July 10, 1997-Zoning permit applied for to construct a single family home on the vacant lot. Permit denied due to insufficient information
- January 8, 2003-Zoning permit applied for to install gravel parking area and place a seasonal camper with deck on vacant lot. Owner withdrew permit application on September 22, 2003.
- October 23, 2003- Complaint filed about increase in parking area without a permit.
- May 3, 2004- Complaint filed from neighbor about someone possibly living in shed and now has water and a deck installed without permits.
- June 21, 2004- Complaint about the shed being rented and is not registered with the city.
- June 25, 2004- Complaint about placement of a trailer on lot, construction of a deck, construction of stairs to bike path and construction of a driveway parking area without permits.
- April 4, 2005- Complaint about an illegal unit.
- June 17, 2005- Complaint about fill added to land without permits
- November 3, 2005- Complaint about an unregistered RV parked on lot and inhabited by tenants without permits.
- May 3, 2007- Zoning complaint about shed converted to living space. Complaint closed without finality.
- July 9, 2010- Zoning complaint received about shed converted to living space.
- August 11, 2010- Zoning permit applied for to convert shed to dwelling unit. Permit denied due to incomplete information.

- September 2011- Staff Site visit noted the shed suffered severe damage due to flooding. A letter was sent notifying owner the violation was remedied when the kitchen, bathroom and living apparatuses have been removed.
- September 13, 2012- Zoning permit applied and approved to elevate existing shed, install new shed and raise land grade of property. UCO was issued to close permit. (Associated building permit states “non habitable space, shall not be living until approvals have been secured”
- February 7, 2020- Complaint received about parcel zoned and taxed as vacant land, now being occupied and claimed as legal residence. No zoning or constructions permits exist to facilitate this change.
- February 24, 2020- Staff Met with owner at the property and explained the reason for the site visit, that being the “Shed” has no zoning permit for conversion to habitable space and that a zoning permit is required.
- July 6, 2020- Notice of Violation issued for unpermitted change in use to a dwelling unit.
- July 23, 2020- Owner filed for appeal of Notice of Violation
- Property listed in Assessor’s Records as a residential vacant land with a lot size of 9,350 sqft.
- Warranty deed recorded in land records on April 16, 2012, upon transfer of ownership from Alfred Guy LaBelle to Susan Paulsen, notes the property as a certain lot of land, unimproved except for a shed, known as 111 North Cove Rd.
- Warranty deed recorded in land records on July 26 2018, upon transfer of ownership from Susan Paulsen to Jacob Schumann notes a certain lot of land, unimproved except for a shed, known as 111 North Cove Rd
- Zoned as a Residential-Low density-waterfront

CDO Article 3.1.2 Zoning Permit Required

Except for that development which is exempt from a permit requirement under subsection (c) of this section, 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;

3. Change of use or expansion of use.

A zoning permit is required to change the use of a structure to a dwelling unit. No zoning permit has been obtained.

CDO Article 5 Part 1: Uses and Structures

Sec. 5.1.1 (a) Preexisting Uses:

Any use lawfully existing as of the effective date of this ordinance shall be authorized to continue solely on the basis of the provisions of this ordinance.

Sec. 5.1.1. (b) Preexisting Non-conforming Uses:

Pre-existing uses that do not conform to the requirements of this ordinance shall be subject to the provisions of Sec. 5.3.4.

Sec. 5.3.3. Continuation

Except as otherwise specified in this Article, any nonconformity which lawfully existed at the time of passage of the applicable provisions of this or any prior ordinance or any amendment thereto may be continued subject to the provisions of this Part.

CDO Article 12. Appeals, Conditional Uses, Variances

Appellant filed a complete appeal as outlined under CDO Article 12 Sec. 12.2.2

CDO Article 13. Definitions

Nonconforming Use: An existing use of land or building that does not conform to the current use or density regulations for the district in which such use of land or building exists as set forth in Appendix A - Use Table and article 4.4.5 (d) 5 c. Such nonconforming uses are those in legal existence at the time of the adoption of the regulations to which they do not conform, including a use improperly authorized as a result of error by the administrative officer or Development Review Board under the finality provisions of 24 V.S.A. §4472. To the maximum extent possible, no entitlement shall be given to those that provide misinformation to City Officials. Permits issued as a result of such misinformation shall gain no legal entitlement regardless of duration of the permit or inaction.

Appellant indicates that the property was a dwelling unit when he purchased it. He purchased in 2018. He has not applied for grandfathering, however, the facts do not support a legally pre-existing nonconformity which would require continuous occupancy for decades. The facts demonstrate that the prior complaint was resolved in 2011 when the property was inspected and confirmed to be in compliance. Further, the 2012 permit for the shed was issued for non-habitable space and conversion into living space was only permissible after all approvals were obtained. That permit received a UCO. No approval for living space has been obtained.

SUMMARY:

Owner has not demonstrated through any documentation that the “Shed” has been approved as a dwelling unit. The Shed has electric, water and a utility box installed by Burlington Telecom for internet and TV cable use. Electricity load and consumption increased starting in August 2018 when the property was purchased by the current owner. Water usage has been consistent with someone living at the property. The property was involved in the flooding in 2011 in which the interior of the shed was gutted due to water damage. The associated building permit clearly states that it is “Non Habitable space”

The owner does not deny that this space is being used as habitable space in his appeal but believes that building codes do not permit tiny homes and has acknowledged the building has electricity, water, septic, insulation, a toilet, sink and shower, and has requested a hearing to allow him to reside at the property without a zoning permit for the change.

CONCLUSION:

The Code Compliance officer, (Interim), for Code Compliance/Enforcement hereby requests the Development Review Board uphold ZV #380819 as valid. The following stipulations are recommended:

1. Within 30 calendar days from date of DRB decision, Appellant shall request an agreement from the Zoning Administrator (to be executed within forty-five [45] calendar days from date of DRB decision) that includes reasonable timelines in which to cure the violation noted in ZV #380819 by discontinue habitation of the shed or to apply for the necessary permits for conversion to a dwelling unit. If Appellant applies for the necessary permits and they are not approved, the violation has not been cured and Appellant is required to discontinue habitation of the shed and convert it back to a non-habitable space within 30 days of the denial.