



Notice of Violation - Response to Appeal

Exhibit "1"

Date: December 17, 2023

Project: Rio Vista Property – Unlawful Uses and Occupancies

Location: 1724 Rio Vista Avenue

Parcel(s): P62688

Appellant: Bernard Morris, Rio Vista Shop LLC

Staff: Brad Johnson, Community Development Director

BJ

Summary:

After receiving complaints regarding a property at 1724 Rio Vista Avenue, staff from the Burlington Community Development department inspected the property and verified the presence of unlawful uses, unpermitted building occupancies, nuisance conditions, and other violations of the Burlington Municipal Code. On May 26, 2023 the City mailed a formal "Notice of Violation" to property owner and posted notices on the property consistent with established City of Burlington code enforcement procedures. On June 9, 2023 the property owner, Bernard Morris, filed a timely appeal.

The statement of appeal submitted by the property owner does not clearly identify any factual or legal errors in the City's Notice of Violation. However, the City understands the owner to argue that the uses and structures on the property are legally non-conforming. The owner has not provided evidence to adequately support this assertion. The City respectfully asks that the examiner reject the appellant's arguments and uphold the notice of violation.

Under relevant Burlington Municipal Code provisions, a legally non-conforming use is a use that (a) existed prior to the adoption of current code provisions, (b) was never abandoned or discontinued, and (c) was lawfully established in accordance with the code provisions and permitting requirements in effect at the time of its inception. For a use or development to be considered legally non-conforming, all three criteria must be met. As documented in this report, the uses occurring on the site are not permitted under current Burlington Municipal Code requirements and were never lawfully established under prior code requirements.

Critically, at all times relevant to this appeal, a permit would have been required to establish or change the use of the site or to occupy or modify a building. The owner has provided no evidence showing that the required permits were ever obtained.

Violations:

This appeal concerns a notice of violation issued by the City of Burlington on May 26, 2023. The notice of violation identified seven individual violations of the Burlington Municipal Code.

1. It is a violation of BMC 17.01.110 to use a structure or property without first obtaining permits, or to use a structure or property for any use, or in any manner, prohibited by the Burlington Municipal Code. The City has no records of permits or authorizations for the uses occurring on the property.
2. The property at 1724 Rio Vista Avenue is zoned MUR-1. Our staff observed uses and activities including vehicle repair, outdoor storage, and contractor services. Vehicle repair, outdoor storage, and contractor businesses are prohibited in the MUR-1 zone (BMC 17.30.050 and 17.50.090.E).
3. Buildings and tenant space numbers were observed on numerous doors. The City of Burlington has not assigned building, tenant, or suite numbers for this property. It is a violation of the Burlington Municipal Code to post addresses or building numbers other than those assigned by the City of Burlington and no building, suite, or tenant space may be used or occupied without an official address or unit number assigned by the City of Burlington (BMC 15.10.090).
4. The City of Burlington has not issued any occupancy permits or authorized the use, occupancy, or modification of any building or tenant space on the property. Our staff have previously conducted inspections and observed unpermitted occupancies, illegally established tenant spaces, and unpermitted building modifications. It is a violation of BMC 15.04.110 and 15.08.150 to alter, use, occupy, or modify any building or structure without obtaining permits under, and in full compliance with, the fire and building codes adopted by the City of Burlington under BMC 15.04.050.
5. The City of Burlington's records indicate the property is not connected to the municipal sewer system and the Skagit County Health Department has confirmed that one or more buildings on the property may be connected to a septic system, cesspool, or private wastewater system. In addition our staff observed a portable toilet located on the property. It is a violation of BMC 13.04.270 to maintain or use any septic system, cesspool, or private wastewater disposal system. All properties within 200 feet of a municipal sewer line are required to connect to the municipal sewer system (BMC 13.04.020). A sewer service is available adjacent to the property and no building or tenant spaces may be used or occupied without approved sewer connections and toilet

facilities. Failure to connect to the municipal sewer system, or the use of a private wastewater disposal system constitutes a nuisance under BMC 13.04.450.

6. Our staff observed paint cans, lumber, pallets, electrical conduit and meter boxes, storage containers, various building materials, and debris being stored outdoors. The storage of such items constitutes a nuisance under BMC 8.12.020.L and is prohibited in the MUR-1 zone under BMC 17.30.080.C.
7. Our staff observed the storage of apparently disused, abandoned, or inoperable vehicles, equipment, trailers, and recreational vehicles on the property. Our staff also observed the storage of tires and automotive parts on the property. The storage of such items is a nuisance under BMC 8.12.020.N and is prohibited in the MUR-1 zone under BMC 17.30.080.C.

Findings:

Illegal and Unpermitted Uses

1. Under BMC 17.05.090.B no land, building, structure, or premises shall be used for any purpose that is not permitted by the Burlington Municipal Code, or in any manner contrary to the requirements of the Burlington Municipal Code.
2. Under BMC 17.05.090.E, if a use is not listed as permitted or conditional in a zone but is listed as permitted or conditional in one or more other zones, it shall be considered a prohibited use in the zone in which it is unlisted.
3. The property at 1724 Riol Vista Avenue “the site” is currently zoned MUR-1 (mixed-use residential). The MUR-1 zone was adopted on May 11, 2023 through Ordinance 1933 and became effective on May 22, 2023.
4. The MUR-1 zone is intended to accommodate a mix of attached housing and commercial uses with an emphasis on residential uses. Uses such as small-scale commercial activities including offices, professional services, home businesses, art galleries and other similar uses that generate limited traffic, pollution, and noise, and primarily operate during daytime business hours are allowed in the MUR-1 zone (BMC 17.30.030). Uses listed as permitted in the MUR-1 zone include detached dwellings, daycare centers, small private schools, meeting facilities, professional offices, personal services, specialized instruction, small nursing homes, small scale retail, small healthcare facilities, and veterinary clinics (BMC 17.30.050). Light industrial uses, contractor offices and storage yards, vehicle repair, storage, and wine making are *not* listed as permitted in the MUR-1 zone but are listed as permitted in one or more other zones. Therefore, consistent with BMC 17.05.090, such uses are prohibited in the MUR-1 zone.

5. From November 12, 2015, until the adoption of the MUR-1 zone on May 11, 2023, the site was zoned MR-NB. The MR-NB zone did allow contractor offices and light industrial uses. Outdoor storage was also permitted as an accessory use.
6. At all times relevant to this appeal, the City has required a land use permit to establish or change a use (BMC 17.01.060). Also, at all times relevant to this appeal, the City of Burlington has required a building permit, and full compliance with applicable building, fire, and life safety codes, to use, occupy, or alter a building or structure (BMC 15.04.110 and International Existing Building Code 105.1). The City of Burlington does not have any records of permits authorizing the uses occurring on the site, nor does the City of Burlington have any records of permits authorizing the use, occupancy, or modification of the buildings on the site. The appellant has not provided any evidence of permits authorizing the current uses and building occupancies.
7. The site was annexed to the City of Burlington in 2015 by Ordinance 1818. Prior to annexation the site was subject to Skagit County's zoning and development regulations and was zoned URR (Urban Reserve Residential). The URR zone lists detached homes, habitat enhancement projects, home businesses, daycares, and small-scale utilities as permitted uses. Light industrial uses, storage facilities, vehicle repair, and contractor offices are not listed as permitted in the URR zone (exhibit "2"). Skagit County has adopted the same uniform (building, fire, and life safety) codes as the City of Burlington and requires a permit to establish or change a use or building occupancy or to modify a building or structure (SCC 15.04.020). The appellant has not provided any evidence of permits issued by Skagit County authorizing the current uses and building occupancies.
8. Historic aerial photos (exhibit "3") indicate that prior to 2015 the site and buildings were used for agricultural purposes. These photos also indicate that between 2015 and 2017 the prior agricultural activities were discontinued and some other use, or combination of uses, was initiated. As early as May 20, 2017, a significant number of vehicles and equipment are visible consistent with the current use of the property. The appellant does not contest that a change of use occurred during this time. In fact, the previous property owner provided the City with documents (exhibit "4") indicating they acquired the property on August 1, 2013, began using it as a contractor yard and storage rental on November 26, 2013, and sold the property to the appellant on April 10, 2017. As documented in the previous finding, prior to the City's annexation of the property, the site was zoned URR, where contractor yards and storage facilities were prohibited. Therefore, such uses could not have been lawfully established prior to annexation by the City of Burlington.

Failure to Connect to Sewer

9. A City of Burlington sewer line is located in Rio Vista Avenue adjacent to the site. All properties within 200 feet of a sewer line are required to connect to the municipal sewer system (BMC 13.04.020) and it is a violation of BMC 13.04.270 to maintain or use any

septic system, cesspool, or private wastewater disposal system when municipal sewer service is available. Failure to connect to the City’s sewer system and the use of a private wastewater disposal system also constitutes a nuisance under BMC 13.04.450. The appellant does not contest that the buildings are not connected to the municipal sewer system, or that a private wastewater disposal system is being used. Instead, the appellant argues they have been unable to obtain sewer service due to factors outside their control and that the City has rejected their request for sewer service. The City has no record of any application for a sewer connection permit. Even if such an application had been submitted, and rejected, the appropriate remedy would be for the property owner to discontinue any uses producing wastewater, obtain a sewer connection waiver, and apply for an appropriate septic system permit from Skagit County.

Unlawful Posting of Addresses

10. Buildings and tenant space numbers are posted on numerous building doors. The City of Burlington has not assigned building, tenant, or suite numbers for this property. It is a violation of the Burlington Municipal Code to post addresses or building numbers other than those assigned by the City of Burlington and no building, suite, or tenant space may be used or occupied without an official address or unit number assigned by the City of Burlington (BMC 15.10.090). The owner argues that the Fire Marshal informed him that unit numbers were required. While this statement may be true, it misses a crucial point. Unit number must be assigned by the City (BMC 15.10.050.A & 15.10.090.A). The City assigns addresses and unit numbers as part of the building permit process authorizing the establishment of the building or tenant space (BMC 15.10.050.B). The City will not issue or approve addresses for illegally created tenant spaces. In this case, because the property owner never applied for building permits to establish tenant spaces or occupancies, no unit numbers were ever assigned by the City, the owner simply posted illegal unassigned addresses on the doors of tenant spaces that were themselves not lawfully created.
11. The City would like to emphasize that the issue of illegally posted unit numbers is not trivial. The use of accurate and lawfully generated unit numbers is a crucial component of Skagit County’s regional 911 system. Officially assigned addresses and unit numbers are “geocoded” and uploaded to the County emergency dispatch system with the exact geographic location of each tenant space. This system allows first responders to quickly locate callers in the event of an emergency. For this reason, posting unit numbers other than those officially assigned by the City is a serious safety concern.

Nuisance Conditions & Other Violations

12. Violations of Title 17 (zoning) constitute nuisances (BMC 17.01.110 & 8.12.020.T). As demonstrated above in findings 1 - 8, by failing to obtain the required permits and by establishing and maintaining uses prohibited in the MUR-1 zone, violations of Title 17 have occurred. These violations constitute a public nuisance.
13. Violations of Title 15 (buildings & construction) constitute nuisances (BMC 15.01.090 & 8.12.020.T). As demonstrated above in findings 6 and 11, by failing to submit plans or obtain required permits, and by posting unauthorized suite, or unit numbers, violations of Title 15 have occurred. These violations constitute a public nuisance.
14. Violations of Title 13 (sewage disposal) constitute nuisances (BMC 13.04.450 & 8.12.020.T). As demonstrated above in finding 9, by failing to connect to the municipal sewer system and by maintaining a private wastewater disposal system, violations of Title 13 have occurred. These violations constitute a public nuisance.
15. In the MUR-1 zone, uses generating noise levels incompatible with residential occupancy are prohibited. This specifically includes truck loading/unloading and deliveries before 7:00 AM or after 7:00 PM (BMC 17.30.080.E). The City has received, and continues to receive, noise complaints and reports of truck loading and unloading.
16. It is a violation to remove or deface any sign, notice, complaint, or order posted under titles 15 and 17 BMC. The City has posted “notice of violation” signs on the property on at least two separate occasions. The signs were subsequently removed.

Conclusion:

The appellant has not identified factual or legal errors in the City’s Notice of Violation. However, clear evidence does establish the existence of uses, building occupancies, and other activities in violation of current Burlington Municipal Code requirements. The appellant has not demonstrated that these uses and building occupancies were legally established.

The City maintains that in the absence of any permits issued either by either the City of Burlington or Skagit County, the uses occurring on the appellant’s property could not possibly have been legally established because both Skagit County and the City of Burlington require building and zoning permits to change the use of a building or site, or to modify a building or structure. These requirements have been in place since the previous agricultural use of the property was discontinued. The appellant has not provided any permits or approvals.

The City asks that the Hearing Examiner reject the appeal filed by Rio Vista Shop LLC and uphold the Notice of Violation dated May 26, 2023.