



CODE ENFORCEMENT OFFICE

645A Pine St, PO Box 849
Burlington, VT 05402-0849
VOICE (802) 863-0442
FAX: (802) 652-4221

PUBLIC HEARING CODE ENFORCEMENT OFFICE REPORT

TO:	Development Review Board
FROM:	Jeanne Francis, Zoning Specialist, Code Enforcement Office
DATE:	November 5, 2013
RE:	ZP 14-0414AP -Appeal of Unsubstantiated Determination of Violation Complaint #254459

LOCATION: 85 Crescent Road **TAX LOT #:** 058-1-078-000

APPELLANT: Frederick P. Tiballi, 20 Crescent Terrace, Burlington, VT 05401

APPEAL: Appeal of Administrative Officer decision (through Code Enforcement Office) dated September 30, 2013 pertaining to a written zoning complaint submitted on September 30, 2013 RE: construction of a retaining wall and excavation for property located at 85 Crescent Road without a zoning permit.

T.24 VSA §4465/ CDO Article 12 Sec. 12.2.2. An appeal of an administrative officer’s decision must be filed with the secretary of the board within fifteen (15) days after the date of decision or act appealed from, and is taken by filing a written notice of appeal with the administrative officer and the DRB (**Appeal compliant with Article 12 Sec. 12.2.22**).

DESCRIPTION OF PROPERTY:

Single family home with approved 2-room boarding house.

Related PROPERTY BACKGROUND:

Cheryl Musty owns properties located at 85 Crescent Road and 62 Crescent Terrace, the latte being the property immediately adjacent to the west. Appellant Tiballi lives at 20 Crescent Terrace.

62 Crescent Terrace:

- June 4, 2010 owner submitted a zoning application to construct a new single family home.
- June 18, 2010 Application (10-1042BA) administratively approved with conditions.
- July 1, 2010 Permit appealed to the DRB.
- September 10, 2010 DRB upheld the permit approval.

- October 21, 2010 Notified of appeal of DRB's decision to the Environmental Court.
- April 27, 2011 Court upheld the permit on.
- August 16, 2011 Notified of Environmental Court decision appealed to the Vermont Supreme Court.
- June 8, 2012 Supreme Court upheld Environmental Court decision.

85 Crescent Road:

- April 26, 2011 Appellant Tiballi submitted written complaints regarding rear yard setbacks and additional complaints.
- April 19, 2011 an "unsubstantiated" decision was emitted by Code Enforcement.
- April 26, 2011 Appellant appealed that determination to DRB.
- June 7, 2011 DRB heard the appeal.
- June 21, 2011 DRB upheld the unsubstantiated decision.
- June 29, 2011 DRB decision appealed to the Environmental Court.
- July 2, 2012 Environmental Court dismissed the appeal; no further appeals filed.
- September 3, 2013 Appellant submitted written complaints regarding the rear retaining wall and additional lot coverage without an approved zoning permit.
- September 23, 2013 After investigation Code Enforcement Inspectors determined the complaint was unsubstantiated.
- October 2, 2013 Appellant Tiballi filed appeal of this determination; current appeal under consideration herein.

APPLICABLE REGULATIONS:

Article 12

RELIEF REQUESTED BY APPELLANT:

- Appellant is requesting that the administrative officer or his designee to in fact enter upon the 85 Crescent Road lot, make a physical examination and measurement and "as built" survey pursuant to 24 V.S.A. §4325(9) and specifically including the rock wall (s) located on the western portion of 85 Crescent Road lot. If entry is refused or denied the Zoning Officer be directed to seek a warrant. To direct Owner to remove said rock wall(s) from 85 Crescent Road within 60 days or file a zoning application for the wall. If no action after 60 days, direct Owner to cease and desist operating the boarding house until all Development improvements located on 85 Crescent Road be identified and certified as to size and location to be in full compliance with Code.
- Issue Owner such fines and cost allowed by law.
- Notify Owner of this appeal.

Code Enforcement Office's Response to Relief Requested:

Absent a survey or other documentation the investigation by Code revealed that a retaining wall is not located on property at 85 Crescent Road and thus there is no additional coverage. The approved site plan (below) clearly illustrates a retaining wall in the location where it is constructed. Fines are not warranted as a violation was not in evidence. Owner was notified of the appeal.

GROUND FOR RELIEF BY APPELLANT:

Appellant states ... "Neither Zoning Permit 10-1042BA nor Building Permit 20- 12 155773-00000BP authorize the 2013 Development, Construction, alteration or modification to the site 85 Crescent Road ..."

Code Enforcement Office's Response to Written Appeal:

Zoning Permit 10-1042BA and associated Building Permit issued to 62 Crescent Terrace includes construction of a retaining wall along the eastern side of property, west of the adjacent property at 85 Crescent Road. This is evident in the approved site plan and as illustrated in the photos below; construction is on 62 Crescent Terrace, not 85 Crescent Road.

CITY's SUBMITTALS:

Attachment A: Appellant's Appeal

Attachment B: Code Enforcement Written Unsubstantiated Complaint Letter Dated September 30, 2013

Attachment C: Approved Site Plan for 62 Crescent Terrace Showing Retaining Wall

Attachment D1 – D3: Photos

CONCLUSION:

The retaining wall is part of and included with the 62 Crescent Terrace permit. Construction vehicles were parked at the 85 Crescent Terrace property to construct the wall, but no additional coverage was added and as far as can be determined, the wall is on property known as 62 Crescent Terrace (see photos below).

CODE ENFORCEMENT RECOMMENDATION:

Uphold the September 30, 2013 written determination that a violation does not exist on property located at 85 Crescent Road.

ATTACHMENT A1-A12: Appeal



CODE ENFORCEMENT OFFICE

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September 30, 2013

Frederick P. Tiballi
20 Crescent Terrace
Burlington, VT 05401

RE: Zoning Complaint #254459
 85 Crescent Terrace

Dear Mr. Tiballi:

Our office has reviewed your complaint of zoning violation at the above-referenced property. More specifically, we investigated the complaint of “Construction of a new retaining wall and excavation for the retaining wall”, in violation of the Burlington Comprehensive Development Ordinance. Upon investigation, based on currently available information, it is our determination that this is not a currently enforceable zoning violation for the following reason:

 X There is insufficient evidence to substantiate the violation; retaining walls appear to be on property located at 62 Crescent Terrace.

 X Zoning permit #10-1042BA and related Building Permit have been approved site work that included construction of three retaining walls (permit approved under 62 Crescent Terrace – see attached).

If you obtain additional information regarding this complaint or new information comes to our attention in the future, our office may re-evaluate this determination.

A decision by the Zoning Enforcement Officer pertaining to an alleged zoning violation may be appealed to the Burlington Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the Burlington Comprehensive Development Ordinance provided that the appeal is filed within fifteen (15) days of the Zoning Enforcement Officer’s decision (October 8, 2013). Your appeal must be accompanied by the appropriate fee in accordance with Article 3.2.4 (a) of the ordinance. The fee and a completed application form must be filed with the City’s Department of Planning and Zoning. For more information regarding an appeal please contact Planning and Zoning at 865-7188. Your appeal may not be considered valid if the complete application and fee are not received within the 15 days.

Please feel free to contact our office at (802) 863-0442 if you have any questions or concerns.

Sincerely,

Jeanne Francis
Zoning Specialist

ATTACHMENT D-1: Photo



The white house is 85 Crescent Road. The retaining wall and construction is on 62 Crescent Terr. Both properties are owned by Cheryl Musty. West looking east.

ATTACHMENT D-2: Photo



South looking north. 85 South Crescent Road is on the top of photo, 62 Crescent Terrace is on the bottom

ATTACHMENT D-3: Photo



South looking north: 85 Crescent Road is on top of picture, 62 Crescent Terr. is on bottom; new (permitted) construction can be seen on the left of photo. Retaining wall is included in 62 Crescent Terr. Approvals.



Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/pz

RECEIVED

OCT 02 2013

DEPARTMENT OF
PLANNING & ZONING

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 85 Crescent Road, Burlington VT

Subject Property Owner: Sherrill N. Musty
Sherrill N. Musty, Trustee

Appellant: Frederick P. Tiballi

Agent/Representative: _____

Mailing Address: 20 Crescent Terrace

City, St, Zip: Burlington, VT

Day Phone: 865-6863 Email: PA.P.A.T@Comcast.net

Appellant Signature: [Signature] Date: Oct. 3, 2013

In order for your request to be considered complete, **ALL** of the following information **must** be provided, as applicable:

- The Appeal fee of \$250;
- Description of the decision under appeal;
- Description of the property subject to the appeal;
- Reference to the regulatory provisions applicable to the appeal;
- Relief requested by the appellant;
- Alleged grounds why such requested relief is believed proper under the circumstances.

Office Use Only:

Check No. Cash Amount Paid 250 Zoning Permit # 14-0914AP

RECEIVED
OCT 02 2013

NOTICE OF APPEAL

DEPARTMENT OF
PLANNING & ZONING

TO THE
ADMINISTRATIVE OFFICER

And the

DEVELOPMENT REVIEW BOARD [DRB]

This is a Notice of Appeal to the administrative officer and to the Development Review Board [DRB] dated October 2,2013. This appeal is from the dated September 30,2013 written decision of the administrative officer pertaining to alleged zoning violation(s) in accordance with the provisions of Article 12 § 12.2.2 of the Burlington Comprehensive Development Ordinance [Code] . This Notice of Appeal is filed within fifteen (15) days after the date of the September 30,2013 written decision or act, from which this Appeal is taken.. The decision or act being the determination of the administrative officer ,or by and through his designee or agent that “this is not a currently enforceable zoning violation for the reasons stated in the letter dated September 30,2013 as signed by Jeanne Francis Zoning Specialist , addressed to Frederick P. Tiballi in reference to the September 3,2013 written Notice of Zoning Violation(s) signed complaint #254459.

1. The name and address of the Appellant ,an interested person, is Frederick P. Tiballi,

who resides and has an address of 20 Crescent Terrace, Burlington, VT 05401.

2. The property as of date of the written signed Notice of Violation Complaint [# 254459] dated September 3, 2013 is and remains a 7,727 sf Lot in the RL Zoning District of the City of Burlington – 85 Crescent Road Lot. The easterly boundary having frontage generally north-south, abutting the west side of the Crescent Road ROW. The averaged depth of the 85 Crescent Road Lot is 78' running to the west from the Crescent Road ROW.

The “Development” of the Complaint, as filed, rock wall(s), retaining wall(s), and the alterations and all other, modifications to the site, without a prior approved Zoning Permit or Building Permit – the violation(s), are all located within a 20' strip of land area, totally within the 85 Crescent Road, 7,727 sf Lot. The evidence of the violation(s) being located within the western most 20' strip of the 85 Crescent Road, 7,727 sf Lot.

3. Article 12 contains the regulatory provisions generally applicable to this appeal. The absence of a valid approved prior “Zoning Permit” authorizing “Development” as required for any Development is contained in Article 1 § 1.1.7 No Use of Land or Buildings Except in Conformity with Ordinance and Article 3 § 3.1.3 Zoning

Permit Required.

4. Relief requested 4(a) – 4 (f)

4. (a)The Appellant request that the administrative officer or his designee [presumably the Zoning Specialist Jeanne Francis] to in fact enter upon the 85 Crescent Road Lot , make a physical examination and measurement and “as built” survey pursuant to 24 V.S.A. § 4325(9) and specifically including the rock wall(s) located on the western portion of 85 Crescent Road Lot. If entry is refused or denied the Zoning Officer be directed to seek a warrant for the purposes of conducting an examination of the premises to determine where the actual new 2013 rock wall(s) identified in the Zoning Complaint # 254459 complained of are in fact located .

(b) As stated in the determination letter and decision dated September 30,2013 [the retaining walls appear to be on property located at 62 Crescent Terrace, that the administrative officer be directed to enter on to Lot 62 of Crescent Terrace pursuant to the specifically granted authority under the standard conditions of Zoning Permit 10-1042BA under “Property Inspection By acceptance of this permit [Zoning Permit 10-1042BA]as approved by the Court , Permittee [Sherrill N.



Musty] authorizes City Officials and/or their authorized representatives, access to the subject property [Lot 62 Crescent Terrace] for purposes of observing work in progress, inspecting and/or measuring the property or improvements...

With this specific granted rights of the City Officials the administrative officer can measure the distance of the east -west depth of Lot 62 Crescent Terrace [7,220 sf lot in area] and determine if the noticed violation of the rock retaining wall(s) are in fact on Lot 62 of Crescent Terrace or that the large rock retaining wall or walls of approximately 80' in length across the width of the Lot is or are on the 85 Crescent Road Lot and not on the 62 Crescent Terrace Lot.

4 (c) If after entry unto 85 Crescent Road Lot and or 62 Crescent Terrace Lot , the actual location of the complaint identified rock wall(s) on the western most 20' of 85 Crescent Road Lot ,are ascertained;

4 (c) 1. To direct the Lot Owner to remove said rock wall(s) as identified and located from 85 Crescent Road Lot , within 60-days or



4.(c) 2. Alternatively to file a detailed and complete application for a Zoning Permit with the Burlington Planning and Zoning Dept. requesting authorization authority for whatever “ Development” has taken place on 85 Crescent Road Lot including the certifications and locations and size of all improvements [“ Development” as defined by Code located within the 7,727 sf 85 Crescent Road Lot].

4(d) The Lot owner be directed after 60 days of the DRB order, to cease and desist operating the boarding house until all “Development” improvements located on 85 Crescent Road Lot be identified and certified as to size and location and to be in full compliance with Code.

4(e) Such fines and cost, including the cost of certifying the location and size of the Development of the rock walls, retaining wall(s) and all other existing improvements of the 85 Crescent Road 7,727 sf Lot, as such fines and cost are allowed by law ,until the violations are rectified. The cost and fines be assed against the Lot Owner or in the alternative in rem against the 85 Crescent Road [7,727 sf] Lot.

4(f) That the Lot Owner be notified of this appeal ,and for such other relief as may be just and proper ,without limitation, under the circumstances.

5. The alleged grounds why such requested relief [4(a)- 4(f)] is believed proper under the circumstances:

5(1) The long history of boarding house use on property within the City of Burlington by Lot Owner without a valid Zoning Permit(s) [See 85 Crescent Road Notice of Nature of Violation dated January 13,2006 “Operating boarding house without an approved Zoning Permit signed by Jeanne Francis, Zoning Enforcement Officer.

See also: the Minutes and Findings of the DRB dated August 8,2006 in reference to the then 85 Crescent Road Lot restated “Minutes and Findings”

The applicant is seeking approval for an existing, but un-permitted, boarding house use in her home. ...the boarding house use has not been discontinued.. Action by Code Enforcement Office has prompted the applicant to re apply. A notice of zoning violation has been issued [August 8,2006] See also ZP 07-



301 CA November 14,2006 which was as of December of 2008 never picked up.

5(2) The period of operation(s) upon information and belief - without a Zoning Permit- from sometime in 1975 through Approval November 14,2006, but again never picked up by Lot Owner.

5(3) Lot Owner has located specifically, the western boundary of 85 Crescent Road ,a 7,727 sf Lot, which Lot , on it's western side has as a common boundary [the east side boundary of 62 Crescent Terrace] and was so identified when the Building Permit No 20-12 155773 00000BP was issued 6/26/2013 and numerous times before and since. The location of the rock wall(s), retaining wall(s) as identified in the filed signed Complaint are in fact on the 85 Crescent Road Lot and not on 62 Crescent Terrace Lot. Their placement on 85 Crescent Road Lot is and has been intentional with the prior knowledge by the Lot Owner..

5(4) The placement of the rock wall(s) in 2013 on the 85 Crescent Road Lot ,upon information and belief, is and continues to be a blatant attempt to circumvent the maximum not to exceed 2,776 square feet of Lot Coverage



mandated by the Court and incorporated by direct reference in both the Zoning Permit 10-1042BA on 62 Crescent Terrace as a separate lot and specifically by Lot Owner made part the issued Building Permit 20 12 155773 00000BP for 62 Crescent Terrace.

5 (5) Neither Zoning Permit 10-1042BA nor Building Permit 20- 12 155773-00000BP authorize the 2013 Development, Construction, Alteration or Modification to the site, 85 Crescent Road Lot.

5.(6) The notice of Zoning Violations Complaint # 254459 is, was and remains located at and on the 85 Crescent Road Lot [not as indicated in the September 30,2013 determination letter decision of or on behalf of the administrative officer, incorrectly by or on his behalf, as the incorrect 85 Crescent Terrace location .

5.(7) The decision of the administrative officer based on the assertion that there is insufficient evidence to substantiate the violation, **retaining walls appear to be on property located at 62 Crescent Terrace** is blatantly contra to the actual physical evidence and contra to the affirmative duty imposed on the administrative officer- to ascertain what is the physical ,on the ground, state of facts. Such information of the physical location of the complained of Violations rock wall(s) , with a minimal effort and physical inspection using the information of the referenced Building Permit 20-



12 155773-00000BP would have and does establish credible evidence that the wall(s) complained of are in fact located on the now 7,727 sf 85 Crescent Road Lot. The assertion of the Zoning Permit 10-1042 BA for and on 62 Crescent Terrace is just commonly referred to "stonewalling" when it comes to the filed complaint which is only with reference to Development without a zoning permit on the 7,727 sf 85 Crescent Road Lot. The written decision, determination letter of September 30,2013 on its face is compelling evidence that the investigation and written determination decision by the administrative officer or his agents failed or fails to meet the reasonable standards imposed on all of those govern by the Burlington Comprehensive Development Review Ordinance[Code] See Article 2 § 2.7.6 Persons Liable

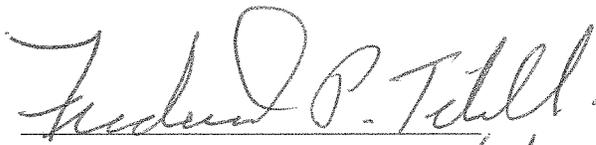
5.(8)Legislative provisions of the Comprehensive Development Review Ordinance [Code] as to Enforcement **,are not discretionary.** Pursuant to Code § 1.1.7 "Use" " Occupancy" of a building or land relates to anything and everything that can ; that is done to, on or in that building or land" and all must be Code Compliant. See: Powers and Duties of §2.3. 3 and specifically the duty to literally , without power to permit any land development that is not in conformance with this Ordinance.[Code] TO ENFORCE Code as WRITTEN.

5.(9) The term "administrative officer Shall" is " mandatory and not merely directory"(pursuant to Code) requiring the administrative officer to administer by investigating fully the entire written complaint, as filed September 3,2013. Administer or administrating the provisions of Code "literally" , and not to permit as a result



thereof any administrative action ,such as the Determination Decision of no zoning violation for the reasons stated in the September 30,2013 letter [as identified herein] ,which would permit or tend to permit any land development including without limitation the Development of the rock wall(s) ; retaining wall(s) that is not strictly and literally [in the absence of a prior approved Zoning Permit authorizing the complained of Code defined Development] in conformance with the Code.

Respectfully Submitted Dated October 2,2013 by:


Frederick P. Tiballi 10/2/2013

Frederick P. Tiballi

Appellant

[Interested Person]

Mailing Address 20

Crescent Terrace

Burlington, Vermont

05401





BURLINGTON
CODE ENFORCEMENT

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ZONING ENFORCEMENT COMPLAINT FORM

Use this form to record and report possible Zoning violations or concerns related to any zoning issue you observe. Mail or return this signed form to the Code Enforcement Office. Include your name, address, and a daytime phone number where you can be reached should we require additional information.

Pursuant to Article 19, Section 19.1.5 of the Burlington Zoning Ordinance, zoning complaints are investigated upon receipt of a signed complaint alleging a violation of the zoning ordinance. All complainant information is kept confidential by our office consistent with Section 19.1.5.

Please note: In the absence of a signed complaint, a concern will be acted upon at the discretion of the Department Director, and only as time allows. No follow-up information can be provided in the absence of a signed complaint form.

Violation Property Address: 85 Crescent Road

Location of Violation at the Site: Western 20' of Crescent Road Lot

Date and Time of Alleged Zoning Violation: Current between 6/28 + date

Alleged Zoning Violation

- Construction without an approved Zoning permit
- New Business (change of use) without an approved Zoning Permit
- Change in Number of Units (change of use) without an approved Zoning Permit
- Occupancy without a Zoning Certificate of Occupancy
- Expansion of parking area without an approved Zoning Permit
- Exterior changes without an approved Zoning Permit: (Please circle type: new/alterd sign, new fence, retaining wall, exterior lighting, large (> 24 inch) satellite dish/ antennae, other _____)
- Demolition without an approved Zoning permit
- Site improvements excavation or fill without an approved Zoning permit
- Subdivision without an approved Zoning permit
- Unmet Conditions of Approval / Property Inconsistent with approved plans
- Other change of use or expansion of use without approval (Please describe on back of this form)

Additional information: See Attached pages 1-7

Name (Please print legibly): Frederick P. Tiballi

Address: 20 Crescent Terrace

Phone (daytime) / email: 658-6863 papa.t@comcast.net

Complainant Signature: Frederick P. Tiballi Date: Sept 3, 2013

Zoning Enforcement Complaint Form

Violation(s) of the zoning ordinance

VIOLATION PROPERTY ADDRESS: 85 CRESCENT ROAD

LOCATION OF VIOLATION AT THE SITE and Zoning Violations not in conformance with Burlington Comprehensive Development Ordinance [Code] :

1. Construction of New, " rock wall", ["Development"] consisting of impervious exposed top surfaces greater than (18) inches in width. Constructed by Lot Owner, or on her behalf, between June 26,2013 and August 27,2013 . Creating new additional 2013 "Lot Coverage" on westerly portion of 85 Crescent Road Lot [7,727 sf lot area] without a prior Zoning Permit [Authorizing construction Zoning Permit and without a "Building Permit", based on the Zoning Permit.
2. Development consisting of one or more alterations, changes ,modification including excavation(s) and land clearing , on 85 Crescent Road , during the time Period June 26,2013 to date, to construct and place the new 2013 retaining wall(s) and other modifications to the 2008 DRB approved ,85 Crescent Road Lot. [**A Non Conforming lot by Code** as of the date Lot Owner currently elected to change, modify, alter its existence- Development - between June 26,2006 and date on 85 Crescent Road.]





CODE ENFORCEMENT OFFICE

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September 30, 2013

Frederick P. Tiballi
20 Crescent Terrace
Burlington, VT 05401

RE: Zoning Complaint #254459
85 Crescent Terrace

Dear Mr. Tiballi:

Our office has reviewed your complaint of zoning violation at the above-referenced property. More specifically, we investigated the complaint of "Construction of a new retaining wall and excavation for the retaining wall", in violation of the Burlington Comprehensive Development Ordinance. Upon investigation, based on currently available information, it is our determination that this is not a currently enforceable zoning violation for the following reason:

There is insufficient evidence to substantiate the violation; retaining walls appear to be on property located at 62 Crescent Terrace.

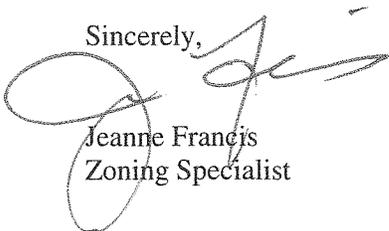
Zoning permit #10-1042BA and related Building Permit have been approved site work that included construction of three retaining walls (permit approved under 62 Crescent Terrace – see attached).

If you obtain additional information regarding this complaint or new information comes to our attention in the future, our office may re-evaluate this determination.

A decision by the Zoning Enforcement Officer pertaining to an alleged zoning violation may be appealed to the Burlington Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the Burlington Comprehensive Development Ordinance provided that the appeal is filed within fifteen (15) days of the Zoning Enforcement Officer's decision (October 8, 2013). Your appeal must be accompanied by the appropriate fee in accordance with Article 3.2.4 (a) of the ordinance. The fee and a completed application form must be filed with the City's Department of Planning and Zoning. For more information regarding an appeal please contact Planning and Zoning at 865-7188. Your appeal may not be considered valid if the complete application and fee are not received within the 15 days.

Please feel free to contact our office at (802) 863-0442 if you have any questions or concerns.

Sincerely,



Jeanne Francis
Zoning Specialist

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For disability access information call (802) 863-0450 TTY.
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