

Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin & Jeanne Francis
DATE: June 7, 2011
RE: 11-0819AP; 85 Crescent Road

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.

Zone: RL Ward: 6
Owner/Appellant: Sherrill Musty / Fred Tiballi

Request: Appeal of administrative determination of no violation.

Overview:

The appellant is appealing an administrative determination of no zoning violation. The appellant, Fred Tiballi, asserts that a number of zoning violations exist at 85 Crescent Road. The Code Enforcement Office has determined that none of the alleged violations exist or are actually violations. Mr. Tiballi has appealed this determination.

I. Findings:

On December 17, 2008, the Development Review Board granted approval to Sherrill Musty's 2-lot subdivision at 85 Crescent Road. The permit was executed and closed out with a final certificate of occupancy on July 10, 2009. No appeals were filed.

On June 18, 2010, Planning & Zoning staff approved a "Basic" zoning permit (10-1042BA) for a new single family home on the vacant building lot created by the aforementioned subdivision. The permit was appealed by Mr. Tiballi and others to the DRB. The DRB denied the appeal and upheld issuance of the zoning permit with conditions on September 24, 2010. Mr. Tiballi then appealed the DRB decision to Superior Court Environmental Division. The Court also denied the appeal and upheld issuance of the zoning permit on April 27, 2011. At the time of this writing, the Court decision is within its appeal period. Note also that Mr. Tiballi has filed a request for reconsideration to the Court.

On March 21, 2011, Mr. Tiballi submitted a written zoning enforcement complaint to the Code Enforcement Office. The complaint alleged a number of zoning violations on Ms. Musty's property. Most of the allegations pertain to the subdivision. The complaint alleges the following:

- That the subdivision property plat was not properly filed;
- That an unpermitted boundary line adjustment was executed;
- That lot coverage is not compliant;
- That the rear yard setbacks are not compliant;
- That the alleged mistakes amount to nonconformities; and,

- That the property plat filed in the Land Records is not actually a mylar.

The appeal also appears to request that the DRB revoke Ms. Musty's zoning permit for the house.

Except for the rear yard setback, the allegations are without merit. The building envelope associated with the subdivision approval did, in fact, contain a 15' rear yard setback (25% of the lot depth). It was not 20' as the required minimum; however, as noted above, the subdivision approval was granted and closed out with a final certificate of occupancy. No appeals were ever filed. The 15' setback amounts to a legitimate nonconformity (see definition of "nonconformity" in Article 13 of the CDO).

Sec. 12.2.5, *Finality*, of the Comprehensive Development Ordinance precludes any individual from appealing any action of the Administrative Officer, DRB, or Court beyond the appeal periods articulated in Article 12. As the section title suggests, decisions become final and binding. This section is based on 24 V.S.A. § 4472, *Exclusivity of remedy; finality*, (attached) that establishes the same provisions in Statute. Note also the case law established by the Vermont Supreme Court In re Tekram Partners, 2005 VT 92, 883 A.2d 1160 (Vt. 2005) (attached). Once a final certificate of occupancy is issued and is un-appealed, the zoning permit is closed out and cannot be contested.

On April 19, 2011, the Code Enforcement Office issued a letter to Mr. Tiballi indicating that it had investigated the allegations in his complaint and found no zoning violations. On April 16, 2011, Mr. Tiballi appealed this determination. The appeal was filed in a timely manner.

In his appeal of Code Enforcement's determination, Mr. Tiballi enumerates 11 alleged violations of the CDO as paraphrased and addressed below.

Alleged violation #1: The vacant building lot created by Ms. Musty's subdivision includes a 15' rear yard setback. It is not 20' as required by the CDO.

As noted above, the building lot does include a 15' rear yard setback. This distance is 25% of the lot depth as generally required; however, 20' is the bare minimum regardless of lot depth. This provision was missed by staff and the DRB in their approval of the permit. Also as noted above, this setback was approved with the subdivision and was never appealed. It is a legitimate nonconformity. Finality precludes contesting it now.

Alleged violation #2-6 & 8-9: The subdivision plat was not properly recorded and is not compliant because it does not contain all required endorsements and signatures and was not filed as approved by the DRB.

The subdivision plat was filed within the required 180 days with most applicable endorsements. The Parks Superintendent signature is missing because that individual was on long term disability leave from the City at the time. There is no project engineer's certification because there was no project engineer (no development was included in the subdivision). Per finality, any deficiencies in the subdivision plat, either real or perceived, cannot now be contested. The subdivision permit was granted, executed, and closed out. No appeals were filed.

Alleged violation #7: Ms. Musty has not deeded her sewer pump station to the city.

There is no requirement that Ms. Musty deed her private sewer pump station, located on her property, to the city.

Alleged violation #10: The rear deck on the existing home projects into the minimum required 20' rear yard setback.

The deck is “accessory” and may project as close as 5’ to any side or rear property line per Sec. 5.2.5, *Setbacks (b) Exceptions to Yard Setback Requirements*, 4.

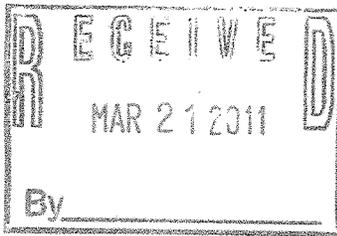
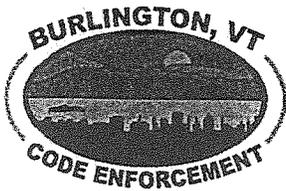
Alleged violation #11: The subdivision depicted on the property plat filed in the Land Records is not the same subdivision as approved by the DRB.

The DRB approved a 2-lot subdivision with conditions. Condition 2 (attached) explicitly required revisions to the plat to achieve a compliant front yard setback, prior to filing in the land records. The subdivision plat was revised accordingly and was then filed in the Land Records. Ms. Musty did exactly what she was required to do in order to comply with condition 2. In any event, finality precludes challenging the long closed-out subdivision permit.

Every one of the alleged violations cited in this appeal pertains to the subdivision. The Court heard these allegations and variations thereof as part of Mr. Tiballi’s appeal of Ms. Musty’s zoning permit for her house and ruled against them. Now they are being rehashed to pursue a zoning violation complaint against Ms. Musty. The subdivision approval is final and cannot now be contested, regardless of any real or perceived deficiencies.

II. Recommended Motion:

Uphold administrative determination of no violation.



CODE ENFORCEMENT OFFICE
 645A Pine St, PO Box 849
 Burlington, VT 05402-0849
 Phone: (802) 863-0442
 Fax: (802) 652-4221

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 + 62 Crescent Terrace
 Location of Violation at the Site: Rear yard setbacks + see attached 11 pages
 Date and Time of Alleged Zoning Violation: Since June 1, 2009 to date
on January 16, 2009

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 March 21, 2011 signed
written complaint pursuant to COE 2.7.5 attached
and incorporated hereto.

Name (Please print legibly): Frederick P. Tiballi
 Address: Mailing Address 20 Crescent Terrace
 Phone (daytime) / email: 802 658 76863, PAPA.T@Comcast.net
 Complainant Signature: Frederick P. Tiballi Date: 3/21/2011

City of Burlington
Department of Planning and Zoning
Administrative Officer
149 Church Street
Burlington Vermont 05401

March 21,2011

In re: "Written Signed Complaint of Violation pursuant to the
Comprehensive Development Review Ordinance.
Document as found in Map Slide 437 B of the
Land records of the city of Burlington ,as of June 1,2010
Plan Showing Subdivision of Portion of Lot No. 7
Sherrill N. Musty Property
No. 85 Crescent Road Burlington, Vermont

Attention : Administrative Officer

Pursuant to the Comprehensive Development Review Ordinance [CDO] Sec. 2.7.5 and
without limitation, the following CDO Sections :

Sec:

1.17	3.1.2	5.3.4(a) (2)	13 Non Conforming Uses
2.2.3	3.2.2(a) 3.	5.3.4. (b)	13 Non Conforming Structures
2.7.5	3.2.2 (e)	5.3.5	13 Non Conforming Lots
2.7.6	5.2.2	8.1.12	and others.
2.7.7(b)	5.2.3	Art 10 10.1.3 (c)	
2.7.9	5.2.3.(A)	10.1.8	
2.7.10	5.2.4(b)	10.1.9 (E)(F)(G) (viii)	
2.7.11	5.3.3	10.1.91(a) 6	

The undersigned hereby files this his written signed complaint, of the undersigned,
alleging to the "Administrative Officer" of the City of Burlington that one or more
violation(s) of the Comprehensive Development Review Ordinance of the City of Burlington
(CDO) ordinances has occurred and continues to date to be in violation of the provision(s) of
the CDO.

The CDO violations are located on or upon or in connection with all or a portion of the above referenced property located within the RL Zoning District of the City of Burlington .

1. A document is located and purports to be recorded in the land records of the City of Burlington, at Map Slide 437 B ,as of June 1,2009. The undersigned ,in this written complaint is hereby alleging a violation of one or more provisions of the Comprehensive Development Review Ordinance of the City of Burlington [hereinafter also referred to as CDO] as of the date of this written complaint and the violations have occurred as early as December 17,2008 to date.
2. The document found at Map Slide 437 B , is not and has not been “properly” recorded in the city’s land records, as the word “properly” is used in the context of recording Final Plat mylars in the city’s land records and specifically Sec 10.1.3 (c) Erection of Building.
3. Sec 10.1.11 (a) Certifications and Endorsements: 1-9 are not by Sec 10.1.11 terms optional .Every final plat seeking recording in the city land records **shall carry the following executed certificates** [at least 1-9] as set forth in Sec 10.1.11 (a) 1-9 and if there has been a lot line adjustment at least a 10 th Certification of Sec 10.1.5. (a) (4) is required:

“Approval of this lot line adjustment plat does not constitute the creation of a separate parcel or lot. It adjust the physical location of a common boundary of the adjoining parcels or lots. This Lot line adjustment has been approved by “

//Scott Gustin
City of Burlington Administrative Officer/Assistant Administrative Officer
Date _____ Zoning Permit #

- 4.. The document found at 437 B is not CDO properly recorded in the city’s land records as Properly is used in Sec 10.1.3 (c) because:
 - a) The “Applicant’s certification” as required by #3 of the 1-9 certification as set out, word for word, “as every shall carry” in Sec 10.1.11.(a) 3. does not appear at all on the recorded document found at 437 B.
 - b) The certification which appears closest to the “Application’s certification”, also noted as #3, entitled Subdividers certification as set

out, word for word, on 437 B is not the same as Sec 10.1.11.(a) 3
“Applicant’s certification”..

- c) Even if the certification in paragraph b) immediately above, were sufficient, said certification is and has not been executed , signed or endorsed by Sherrill N. Musty or anyone else on her behalf.

- d) Pursuant to Sec 10.1.11 1 and 6 of the 1-9 certifications requires the City Engineer’s certification as set forth ,word for word, as Certification 1 and a separate Certification for the signature and certification or endorsement of the City Engineer for certification #6. Certificate number 1 appearing on the document 437 B is not and has not been signed , executed or endorsed as required by Sec 10.1.11 (a).

- e) Certificate # 8 the “Certificate of the City Fire Marshal” was signed , endorsed or executed on the document found at 437 B on 5/21/2009.

- f) Certificate # 9 of the Chair of the DRB was signed , executed and/or endorsed on May 19,2009 ; witnessed by Scott Gustin (presumably the same day). The Chair’s signature , execution or endorsement by the Chair of the DRB, two days prior to the signature execution and or endorsement of the City Fire Marshal on May 21,2009.

- g) Pursuant to Sec 10.1.11 (a) 9 of 1-9 the endorsement of the Chair, nor the witness “shall not take place until **all** required plats, construction drawings, and supporting documents have been submitted to the administrative officer and determined to be complete and accurate.

- h) Prior to the endorsement of the final plat, the city engineer and the administrative officer shall check all documents to be filed to ascertain that they are as approved. It is obvious from looking at the document in 437 B this checking of all of the documents to ascertain that they are correct must not have occurred- there are nine (9) ,at least, certifications required by Sec 10.1.11(a) there are fewer than Nine Certifications present on 437 B, and of those present some are not signed ,executed nor endorsed . The certification of the City Clerk does not count as one of the nine.

- i) All final plats as part of the final approval pursuant to Art 10 Sec 10.1.9 (a) Final Plat Approval Process (E) the plans and profiles of the sanitary sewer system showing the system as there in provided, together with a covenant of the Applicant that after the pumping station has been installed that applicant shall deed the same to the city in this case a deed to a pump station located within the footprint of Applicants proposed house beneath

the enclosed garage finished floor. No such covenant signed prior to January 16,2009 is on file with the City.

- j) Pursuant to Sec 10.1.11 (b) the final plat and all associated documents where not recorded in the office of the chief administrators officer within 180 days of the DRB's approval of the final plat.; rendering pursuant to Sec10.1.11 (b) the final plat approval void.
- k) The document found in 437 B does not comply with the terms of Sec 10.1.9 (a) 6 .
- l) The document found in 437 B does not comply with the terms of Sec 10.1.11 (b) in that it is not drawn in black permanent inks on three (3) to five) mil stable- base polyester film (mylar) .
- m) Nor is the document otherwise CDO compliant because it shows in the underlying zoning district a rear yards setback for the Improved Lot of stated 7,727 sf to be 15' and the rear yard setback for a vacant lot of 7,220 sf also having a 15' setback where CDO in RL zone requires in no event less than 20'. [See Table 4.4.5-3]
- n) The Improved Lot of as stated on the document found in 437 B by the terms of 437 B states that the Lot Coverage of the improved lot is 40% +/- and the RL zone maximum is and was and remains a maximum of 38.5% and the stated Lot coverage is not CDO compliant at 40%.
- o) The Improved Lot and the structure ,at 85 Crescent Road , of as stated on the document found in 437 B, Lot Coverage is 40% +/- . In the RL zone maximum is and was and remains a maximum of 38.5% . The stated Lot coverage not CDO compliant at 40%. Not CDO compliant because it is, and has a 15' Rear Yard Setback as compared to the CDO required Minimum of 20'
- p) The Improved Lot structure, as part of the stated 2,866 sf including, as shown on 437 B , rear yard deck or porch as the western most part of the existing improvements is not CDO compliant because the western 5' of the Porch or Deck of lot coverage is located within the 20' required setback, as built ,is not allowed to intrude by CDO into the rear yard setback.
- q) The Vacant Lot , proposed structure,(s) as part of the stated 2,776 sf as reflected on the plans of Sherrill N. Musty of either June 18,2010 or of

12/17/2009 contemplate construction on a 7,220 sf lot which has not been approved by the DRB, and /or shows a 15' rear yard set back which is not CDO compliant.

- r) The Vacant Lot proposed structure(s), as part of the stated 2,776 sf as reflected on the plans of Sherrill N. Musty contemplate construction on a 7,220 sf lot showing is not compliant because the Square Feet of actual Lot Coverage as state is 2,776 sf of a maximum allowable 2,780 sf if the size of the Vacant Lot is 7,220 sf and the four (4sf) difference between the proposed existing to over the maximum of five (5 sf) does not include the hard surface area at grade level of the sewer line clean outs, nor the hard surface of the utility services which are at grade or above grade on the vacant lot .

- s) The retaining walls and or exposed rock or ledges as part of the retaining walls and or exposed ledge will constitute lot coverage at any portion that is 18" or grater at its top surface and combined with the square footage of (r) above will be in excess of the five square feet (5sf) added to the stated 2,776 maximum allowed in an RL zone.. If any of the ledge is exposed it Is as exposed other form of lot coverage by CDO.

5. For these paragraph number 4 (a) – (s) above without limitation , non CDO compliant items there have been and continue to be evidence of numerous separate violation of the Comprehensive Development Review Ordinance of the City of Burlington. Most of these, if not all of these violations of CDO , upon information and belief ,after reasonable inquiry made under the circumstances, the administrative officer or his agent in the form of Scott Gustin has personal knowledge and personal observation of numerous of the CDO violations and has had said knowledge since on or about the date of said CDO violations.

6. To be clear this complaint is NOT requesting any determination that the actions complained of are illegal, or not valid, nor not final , in the context of the jurisdictional issues which are the providence of the Environmental Court or the Supreme Court; under the finality provisions of 24 V.S.A. §4472 they are final and valid but not CDO compliant. They are ultra vires nonconformities. They are CDO Violation(s).

7. This complaint is solely and exclusively : is or are the acts or decisions or conditions individually and or collectively as they exist [during the period September 28,2008 to date] (or are proposed to exist) , in “literal” compliance with the terms of the Burlington Comprehensive Development Review Ordinances [CDO]?

8. For purposes of this complaint and the requested enforcement a violation of the CDO ordinance, individually and or collectively, shall also be referred to as “Non CDO

Compliant” and is synonymous with a “Violation(s) of this ordinance” as used in CDO Sec 2.7.5 Observation or Complaints of Violation. – Violation(s) equals non compliant pursuant to CDO.

9. Be advised that until these alleged violation(s) of this “ordinance “are fully investigated and all actions which may be warranted are in fact taken, it is asserted that the issuance of a further Zoning Permit and or Building Permit, or a Curb Cut Permit or any other permit for the overall property or any part thereof of the 14,947 sf Portion of Lot No.7 of Sherrill N. Musty Property No, 85 Crescent Road or the “Improved Lot” of either 8,927 sf or 7,727 sf; or the “Vacant Lot” of 6,020 sf or 7,220 sf will be considered material evidenced of “Bad Faith”. Bad Faith act or acts in direct violation of the obligations imposed upon the City of Burlington pursuant to CDO Sec 2.3.3 Powers and Duties. Duties requiring the administrative officer to , as in “Shall” “as mandatory and not merely directory’(pursuant to CDO) requiring the administrative officer to administer by investigating fully the entire written complaint. Administer the provisions of CDO “literally” , and not to permit as a result thereof any administrative action which would permit or tend to permit any land development [subdivision, lot, land building permit curb cut ,blasting permit and or individually or collectively use that is not strictly and literally in conformance with the CDO.

10. The existence of the power , **ultra vires or not** ,to issue permits is not the same thing as are there CDO Violation(s) creating or representing Non CDO compliant actions, conditions, subdivisions ,lot(s), building permits and or uses. The existence of CDO non compliancy creates per CDO Article 5 Part 3 : NON- CONFORMITIES .

- (a) Sec 5.3.4 Nonconforming Uses (a) 1. Nonconforming Non- Residential Use
[Improved Lot Boarding House]

- (b) Nonconforming Residential Use [Vacant Lot proposed 2,776+
Single Family Residential.

- (c) Sec 5.3.5 Nonconforming Structures (a) [Improved Lot Boarding House]

- (d) Nonconforming Residential Structure [Vacant Lot proposed 2,776+
Single Family Residential.

- (e) Sec 5.3.6 Nonconforming Lots (b) and (c) [Improved Lot Boarding
House]

(f). Nonconforming Residential Lot [Vacant Lot proposed 2,776+
Single Family Residential.

[See also Sec 13.1.2 Nonconformity;

Nonconforming **Lot or Parcel** including a lot or parcel improperly authorized [as in non CDO compliant] as a result of error by the administrative officer or DRB under the finality provisions of 24 V.S.A. §4472.

Nonconforming **Structure** ...not in conformance with current zoning regulations covering building disposition on lot ,area, or yard including [the existing and proposed] structure improperly authorized as a result of error by the administrative officer or DRB under the finality provisions of 24 V.S.A. §4472.

Nonconforming Use including a use improperly authorized [as in non CDO compliant] as a result of error by the administrative officer or DRB 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.**

11. It is alleged **that for purposes of this Complaint of CDO violation(s)** or not, it is immaterial as to whether the Applicant relied on the advice of others including the Staff or the DRB itself. The Applicant, it is alleged, in submitting the request for approvals and permits and or certificates is and did affirmatively assert, or deemed to have asserted, that everything requested by Applicant is or was CDO compliant. If it is not CDO compliant, such as the rear yard setback on the Improved Lot being 15' instead of the RL zone minimum required " in no event less than 20' ", that is misinformation provided by the Applicant and the same applies to the Vacant Lot of the same non compliant violation of a 15' rear yard setback on the Vacant Lot where 20' is and was required and submitting or providing a 15' rear yard setback is misinformation provided by Applicant to a City Official.. See also Standard Conditions 1-18

12. After the Administrative Officer, as CDO required makes a full investigation of the existence of one or more of the alleged CDO violations, " no zoning or building permit [construction or otherwise should be issued by the City or its departments and no building should be allowed to be erected on any portion of Lot No. 7 of Sherrill N. Musty sometimes referred to as 85 Crescent Road and or 62 or 68 Crescent Terrace, Burlington Vermont until a new or corrected and "properly" pursuant to Sec10.1.3 (c) is recorded pursuant to the provisions of CDO of a completed and corrected final subdivision plat has been

subsequently to date been approved by the DRB at a duly warned meeting and **the than approved Plat is “properly” recorded in the city’s land records, finalizing that which the DRB has in fact subsequently Approved.**

13. See “Plat” **13.1.2** A map prepared pursuant to the requirements of Article 10 and recorded in the City Land Records. Not a map which has been improperly non CDO compliant authorized with a 15’ Rear Yard Setback, without all of the certifications as required by 10.1.11 (a) and not a “Mylar as defined by Sec 10.1.11 (b), nor one which has been altered or changed or modified contra to Sec 10.1.11(c) , after it was DRB approved as a result of error by the administrative officer or DRB under the finality provisions of 24 V.S.A. §4472. BUT **a plat CDO compliant with all of Article 10 and “properly” recorded in the land records. [Not just not appealed.]**

14. The “Improved Lot” being located on the Eastern portion of the Property now or formerly own by Sherrill N. Musty generally referred to as 85 Crescent Road as reflected on the document in 437 B said “Improved Lot” is represented to have a 15’ Rear Yard Setback in an RL Zone which pursuant to Table 4.4.5-3 of CDO is not compliant with the requirement that in an RL zone “in no event less than 20’.

15 The document 437 B in the land records on the left bottom of the recorded document it states as a

Note :

LOT COVERAGE WITH EXISTING HOUSE,DRIVE &WALK = 40 % +/-

437 B appears to be under a licensed surveyor seal and would have some notice of correctness and of course 40% is larger than 38.5%

16. 437 B as **recorded is not compliant with the actual DRB approval of 12/17/2008 as Final January 16,2009** and the accompanying non appealed Zoning Permit- COA Level III – Conditions of Approval, ZP # 09-311SD dated December 17,2008 as well as the Zoning Permit of 12/17/2008 Certificate of Appropriateness and or a combination of one or more of the violations, as noticed in paragraphs 1-15 above, and upon which this written signed complaint is filed this 21 th day of March 2011.

17. Additional complaint of allegations of CDO violations are as follows. Upon information and belief ,after reasonable and due inquiry under the circumstances, numerous changes modifications or revisions, after the DRB had given an approval on December 17,2008 ; at least one or more signatures were made after that of the Chair’s of the DRB endorsed in

writing on the proposed plat of May 19,2009; See Sec 10.1.11 end of Certification #9 of 1-91 .

(a). Changes ,modifications and or alterations as noted on 437 B represent substantive changes and modifications to the Findings of fact and the approved plans or site plan as presented to the DRB at or prior to the December 17,2008 meeting and Decision of the DRB as well as the two zoning Permits issued Administratively on December 17,2008 which incorporated all of said plans .

(b) The principal alterations changes and or modification substantive in nature, are with out limitation:

(i)The Depth of Lot of the 8,927 sf Improved Lot has been reduced on its south boundary from 90' lineal feet to 72'; with a resulting sf Area reduction of 1,200 sf of the Improved Lot to 7,727 sf. From 8,927 SF

(ii)The Depth of Lot of the 6,020 sf lot on its South Side has been increased by 12' from 60' to 72 ' with a resulting increase of 1,200 sf to the Vacant Lot to 7,220 sf ,and results in allowable increase of over 470sf of improved actual lot coverage per CDO, from 38.5% of a 6,020 sf Lot of the 12/17/2008 DRB decision..

(iii)The Improved Lots CDO compliant, or near CDO compliant, 27' rear yard setback, has been changed to 15' thereby either increasing CDO non Compliance or creating a CDO rear yard Setback non CDO compliant non conformity.

(iv)The front yard setback of the Vacant Lot has been **changed ,after the DRB decision of 12/17/2008 became Final as not appealed January 16,2009,** although underlying Zoning District CDO Compliant, is not CDO compliant because **no Subdivision approval has been given by the DRB to a 35' Front Yard Setback on the Vacant Lot before January 16,2009** when its December 17,2009 Subdivision Approval went Final without an appeal, and 24 V.S.A 4472 repose of finality became **inviolate as of January 16,2009.**

(v) None of the Changes modifications and or alterations pursuant to Sec 10.1.11 (c) have been resubmitted to the DRB for their review and approval and the Plat or at least 437 B is Null and Void.

18 .In this regard the City through its Administrative Officer and Sec 2.7.5 , or through the DRB pursuant to Sec 10.1.11 (c) is requested to take such enforcement action , such as to

institute proceedings to have the plat [document 437 B] stricken from the records of the chief administrative officer, and direct the Zoning Administrators or Administrative Officer attention to the remaining or last sentence of Sec 10.1.11 (c).

19. The Administrative officer is requested ,in administrating the provisions of the Comprehensive Development Ordinance , as it relates to this ‘written signed complaint’ in its entirety to administer the provisions of CDO literally without permitting the document as recorded in Map Slide 437 B [as a part of “Land Development” to remain of record in the land records of the City of Burlington, as well its’ removal from the records of the chief administrative officer.]

20. The “administrative officer pursuant to Sec 2.7.5 of CDO is hereby requested to inform the undersigned complainant in writing of the action(s) that have been taken.[See Sec 2.7.5 ; Sec 2.7.6. ; Sec. 2.7.9 without limitation].

Frederick P. Tiballi
Mailing Address
20 Crescent Terrace
Burlington, Vermont 05401

21. The Administrative officer is requested in administrating the provisions of the Comprehensive Development Ordinance as it relates to this ‘written signed complaint’ in its entirety to administer the provisions of CDO literally without permitting any of the CDO non Compliant Violations to remain. To ascertain the exact square feet of lot coverage as defined by CDO of all of the existing improvements on the “ Improved Lot”. To determine if said actual as built Lot Coverage of CDO Improvements exceed on the “Improved Lot” 2,975 sf of CDO defined lot coverage. [38.5% of 7,727 sf area].

22. This request is Notice that 437 B purports to state, signed by a licensed surveyor, that the Lot Coverage on the Improved Lot is 40% . Records of the Staff and/or administrative officer on or about June 18,2010 indicate that from the 437 B construction drawings ,the Lot Coverage appears to be as approved as construction drawings in 2010 37.2% .[See also Standard Conditions 1-18 as toe risk of error.]

23. Upon information a belief, made after a reasonable and due inquiry under the circumstances , as well as personal observation, that the existing CDO determined Lot Coverage on the “Improved Lot” as of March 20,2011, has expanded in square footage since the drawing depicted on 437 B of what ever date..

24. In determining Lot Coverage, as CDO defined, should include any hard surfaces on the "Improved Lot" associated with the proposed sewer line crossing the "Improved Lot" to benefit of the Vacant Lot, such a grade level hard surfaces..
25. The proposed plans of the Applicant/owner of the Vacant Lot sewer line and pumping stations drawings and submissions to date have not been CDO compliant with the provisions of Article 10.
26. To date applicant has not submitted her covenant to deed the easement across the Improved Lot ,nor the Vacant Lot, nor to deed to the City, the pumping station as is to be located ,as proposed , beneath the finished floor of the garage. The specific terms of CDO appear to require an ownership interest in the Pumping Station be transferred . Ownership interest transfer ,in turn, would require, or may require, a subsequent subdivision of this Property to accommodate such a deed of conveyance.
27. That Sherrill N. Musty as the apparent title owner of the Improved Lot requiring a 20' rear yard setback be directed to apply for and receive an approved variance before any further permits on the Vacant Lot and or the Improved Lot be issued.
28. That the 20' Rear yard setback on both the Vacant Lot and the Improved lot be CDO enforced and the Improved Lot obtain a Variance or remove the western 5' of the western most existing improvement on the existing "Improved Lot".
29. That the Zoning administrator or Administrative Officer ,in considering the issuance of any further Zoning Permits or construction or Building permits refrain from issuance to or on the Vacant Lot any permit which does not have a CDO compliant Rear yard setback even though because of the past errors and improperly authorized 15' rear yard setback as the result of administrative officer or DRB error has because of the finality provisions of 24 V.S.A. of 4472 become final and valid but ultra vires CDO non Compliant non conformity as to the Vacant Lot and a separate but related Non conformity as it applies to the Improved Lot.

Dated this 21 day of March 2011



Frederick P. Tiballi
Mailing Address
20 Crescent Terrace
Burlington, Vermont 05401
Papa.t@comcast.net



CODE ENFORCEMENT OFFICE

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

April 19, 2011

Frederick P. Tiballi
20 Crescent Terrace
Burlington, VT 05401

RE: 85 Crescent Road/ 62 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 rear yard setback and additional violations of the Burlington Comprehensive Development Ordinance as stated in your complaint. Upon investigation, based on currently available information, it is our determination that this is not a zoning violation for the following reasons:

Zoning permit(s) have been approved.

The alleged violations relative to setbacks, lot coverage and additional violations have been adjudicated by the Superior Court, Environmental Division on a bench ruling; final judgment order supporting this ruling pending.

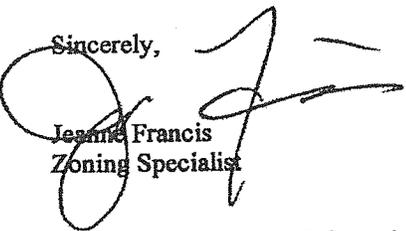
The subdivision plat was approved and not appealed. The plat is filed in Land Records under Map Slide 437B (filed 6/1/09). As this is an unappealed decision, it is final and cannot be contested pursuant to 24 V.S.A. § 4472 (d).

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. 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

Information available in alternative media forms for people with disabilities.
For disability access information call (802) 863-0450 TTY.
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NOTICE OF APPEAL
TO
BURLINGTON DEVELOPMENT REVIEW BOARD

1. This is an Appeal from the Zoning Enforcement Officer , In re : 85 Crescent Road/62 Crescent Terrace, Burlington Vermont, the Musty Property, and the Zoning Enforcement Officers decision dated April 19,2011 pertaining to the alleged zoning Violations as filed March 21,2011 by the undersigned Frederick P. Tiballi . The Written notice and complaint of Zoning [CDO] Violations was filed by the Appellant , as a resident of the City of Burlington with the mailing Address of 20 Crescent Terrace , Burlington Vermont , 05401 (802) 658-6863 , and as a neighbor who is directly affected .

2. “Written Signed Complaint of Violations pursuant to the Comprehensive Development Review Ordinance; Document as found in Map Slide 437 B of the Land Records of the City of Burlington , as of June 1,2009 Plan showing Subdivision of Portion of Lot No. 7 Sherrill N. Musty No. 85 Crescent Road , Burlington, Vermont.; consisting of Pages 1-11; together with the 1 page Cover sheet, executed Zoning Enforcement Complaint Form, as date stamped received by the Code Enforcement Office dated March 21,2011.

Incorporated also is the April 19,2011 Zoning Specialist, as signed by Jeanne Francis [Zoning Enforcement Officer and or Zoning Compliance Officer] written Decision dated

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April 19,2011, in referenced to the above Written Signed Complaint. [1 Page Decision, dated April 19,2011.]

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3.As stated, by Jeanne Francis in the April 19,2011 determinations , “if additional information comes to their attention, that their office may re- evaluate their determination of April 19,2011. Appellant request and submits ,as part of this Appeal the following items (identified below) which do not appear to be in the City’s public files, nor to have been reviewed by the Code Enforcement Office to date. The DRB is requested ,to request, the Code Enforcement Office and any other employee and or agent(s) of the City to locate the below identified items. If so located, to re evaluate the Code Enforcement Office determination , with due consideration of this newly located information or the record absence of said items 1-3 information .

If any of the documents 1-3 identified below , required by the Burlington Development Board Regulations [Section 28-6(h) as re codified] , are located; that certified copies of the same be provided to the DRB with copies to the Appellant, for the DRB evaluation as part of the DRB appellate determination.

4. Administrative Officer[Scott Gustin acting for the Administrative Officer or as the Administrative Officer as provided in the DRB regulations per CDO and his employment responsibilities] informed the DRB that the Musty submission, was in fact CDO compliant .Scott Gustin did, or was charged with the responsibility of having, checked [November 5, 2008 as well as December 16,2008] the final plat as submitted by Sherrill N. Musty, for the DRB to act upon at its December 17,2008 Meeting and Hearing date. [Presumably done as

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of December 16, 2008 See: Staff Comments and Recommendations to DRB of November 5, 2008 and again December 16, 2008 attached as Appellants Composite Exhibit 3 together with whatever public or private records of DRB has in the possession of the DRB.]

5. The public reports do NOT as stated alert the DRB of the CDO Violations of this Appeal; nor notify the “Chair” before certification of May 19, 2009 of the violations or material changes to the document 437 B from the DRB Approved decisions and plans..

6. To the contrary a fair reading of the Staff [Scot Gustin’s] “comments and recommendations of November 5, 2008 and December 16, 2008 strongly imply that all is in fact CDO Compliant – other than maybe the ministerial issues of the 23 to 33’ minimum Front Yard Setback on the 6,020Sf Vacant Lot.

THE MINISTERIAL QUESTION OF A COMPLIANT 23’ to 35’ FRONT YARD SETBACK TO THE 6,020 SF VACANT LOT IS NOT A DIRECT ISSUE IN THIS APPEAL.]

7. Scott Gustin [Staff] comments and recommendations together with Staff findings and written recommendations concerning the proposed 2-lot subdivision of at least November 5, 2008 and December 16, 2008 to the DRB did not put the DRB, or the “Chair” on Notice of the noted CDO VIOLATIONS; and Scott Gustin’s oral representation during the subsequent DRB meeting and hearings concerning the Musty Submission has at all times represented directly to the DRB –and therefore the “Chair” that “all was CDO Compliant” . {See Composite Exhibit #3} and whatever recordings the DRB may have of its meetings Public and or Private, with Scott Gustin or other members of Staff.]

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8. After Staff recommendations and comments of November 5, 2008 and again; December 16, 2008 as well as recommendations and comments directly to the DRB in open public meetings; the DRB, after the close of public hearing, December 17, 2008; "Approved", with modifications [Approval Conditions 1-4, which included the Standard Conditions 1-18, and the related December 17, 2008 Zoning Permit :09-311 SD COA – Level III- Conditions of Approval and Zoning Permit ZP: 09-311SD December 17, 2008 Certificate of Appropriateness for the Vacant Lot of 6,020 sf. Were issued.

[As provided in the DRB Regulations, "a notation of such action shall be made on the original tracing and two (2) copies of the final plat" [Chapter 28- Subdivisions re codified Section 28-6 (h) [To date no such actual notation of the December 17, 2008 actions has been located in the files of the DRB in existence as of December 17, 2008.]

The DRB is requested to direct the appropriate City employee(s) to locate these or this required notation on the original tracing and/or copies as existed as of the latest December 17, 2008, or to certify that such original tracing or copy of the original tracing as of December 17, 2008 which was presented by Sherrill N. Musty do not exist within the records of the City. [The above notation is separate and apart from the Chairs signing on May 19, 2009.]

The Additional information Identified above, in the possession of the City, and apparently not included in the review by the City Code Enforcement Office, for identification referenced as "New Information Item 1".

9. The Final Approval of the 2-lot subdivision of the Musty 14,947 sf Property into an 8,927 sf Existing Improved Lot and a 6,020 sf Vacant Lot as DRB Approved with the Approval Conditions 1-4 pursuant to Sec 10-1.11 (a) provided the limited ministerial authority for Austin Hart (as Chairman) to sign the plat certificate as provided for in the December 17, 2008 Approval Motion of the DRB pursuant to Sec . 10.1.11.

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This DRB's CDO regulations provide that the original, or reproducible copy of, *"a notation of the action having been made on the original tracing and two (2) copies of the final plat"*)*[See above]* shall be retained by the Board for its records. No such original, or reproducible copy of, *"a notation of the action having been made on the original tracing and two (2) copies of the final plat"* has not been reviewed by the Zoning Enforcement Office. *[To date no such actual notation of the December 17,2008 actions on the original or reproducible copy has been located as retained in the files of the DRB in existence of and dated as of December 17,2008.]*

The DRB is also requested to direct the appropriate City employee(s) to locate these or this, required retained notation on the original tracing and copies as existed as of the latest December 17,2008 as retained by the DRB , or to certify that such original tracing or copy of the original tracing as of December 17,2008 which was presented by Sherrill N. Musty do not exist, as retained by the DRB.

Additional information Identified above , in the possession of the City has not been included in the review by the City Code Enforcement Office. New Information 2 for reference and identification.

10. As CDO required, the DRB in its discretion , by "Motion" granted Approval with "Approval Conditions 1-4 [modification] which 'Approval with or subject to Approval Conditions 1-4 were ,as CDO required included in the Minutes of the DRB's meeting of December 17,2008 and the specific ZP:09-311SD COA- Level III Conditions of Approval ..

The DRB's Regulations also provide that a copy of the applicable minutes[December 17,2008 Minutes and Findings of Fact shall accompany the original tracing and each print of the final plat. *To date no such copy of the applicable minutes reflecting that they accompanied the original tracing or copies with the actual notation on the original tracing and each print of the December 17,2008 has been located in the files of the DRB in existence of and dated as of December 17,2008.]*

Additional information Identified above , in the possession of the City ,has not been included in the review by the City Code Enforcement Office. New Information 3 for reference and identification.

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11. Appellant asserts that if the City is able to locate such document and or documents as identified as New Information 1-3 individually or collectively, and to certify its accuracy as being in existence as of the actual DRB approved :

1. Existing Improved Lot of 8,927 SF
2. Vacant Lot of 6,020 sf
3. Which approved lots above having a common Boundary Line located 90' West of the Western ROW of Crescent Road and 60' East of the Eastern ROW Line of Crescent Terrace on its South 54.64' and on its Northern end abutting the Eastern Boundary Line of the Private property of A&P Rose known as 71 Crescent Terrace.

That said documents are material to a proper and full resolution of this CDO defined COMPLAINT of CDO VIOLATION(s) Investigation and proper resolution of this Appeal.

12 Assuming the documents that should be in the City files as identified in New Information Request 1-3 above are located or similar documents are located and produced, they upon information and belief, will show substantially what has been summarized above: the CDO Violations are patent and obvious, as the CDO, is literally interpreted and enforced.

13. Legislative provisions of the Comprehensive Development Review Ordinance [CDO] as to Enforcement, are not discretionary. Pursuant to CDO § 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 CDO 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.[CDO] TO ENFORCE CDO as WRITTEN. See also

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the provisions of re-codified Chapter 28- Subdivisions and specifically Sections 28 –(h), as noted of the Burlington Development Review Board Regulation, all without limitation.

14. Appellant notified the “Administrative Officer” of the City of Burlington of the existence of one or more literal violation(s) of the Comprehensive Development Review Ordinance of the City of Burlington (CDO) having or has occurred and continues to exist as of March 21,2011 as violation of the literal provision(s) of the CDO since at least June 1,2009.

15. The CDO violations are located on, or upon, or in connection with, all or a portion of the above referenced Property located within the RL Zoning District of the City of Burlington .

16. DRB Subdivision Approval of the Property of Sherrill N. Musty, [the Property and the associated land and Zoning and Planning records] occurred December 17,2008 . As DRB Approved, is Final, not subject to Appeal because of 24 V.S.A §4472 (d) from and after January 16,2009.

17. The document as found of record in the Land Records of the City of Burlington at Map Slide 437 B, on its face, subsequent to January 16,2009 , as well as every relevant action of Sherrill N. Musty individually from January 16,2009 to the present date reflect one or more ultimate CDO direct Violation on individual and various portions of the Musty Property, with the most direct CDO Violations being :

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The Western DRB Approved 60' Portion of the Sherrill N. Musty Property and the Eastern DRB Approved 90' ; in all documents incorporated into the DRB December 17,2008 Approval of this 2- lot Subdivision of Sherrill N Musty original 14,947 sf unified single lot of record is contra to the DRB records including the official files of this DRB which reflect that the Property(for identification purposes) referred to as the DRB APPROVED VACANT LOT and the DRB APPROVED IMPROVED LOT are 6,020 SF and 8,927 sf respectively .

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The DRB Approved Vacant Lot, “Rear Yard SETBACK”, is at all times set forth as a 15’ Rear Yard Setback, located in the RL Zoning District . Pursuant to CDO Table 4.4.5-3 :

Residential Districts Dimensional Standards - ... “BUT IN NO EVENT LESS THAN 20’ ”

The Musty Property within any 2-lot DRB approved Subdivision in this RL zone [as relevant] does not have a CDO Compliant Rear Yard Setback of “ but in no event less than 20’ ”.

[The rear yard setback on all documents, decisions Findings of Fact, drawings site plans and purported plats or mylars ALL SHOW a “Rear Yard Setback of 15’.

18. The DRB following recommendations and representation of Staff, that the Submission was CDO Compliant. DRB, adopted the DRB Findings of Fact, which adoption although final was not then and are not now CDO compliant. Findings by the DRB were not appealed and are final but NOT CDO COMPLIANT .

19. One of the More significant Findings of Fact as found by the DRB is that the “Common Boundary Line” is and was and remains as found by the DRB at its December 17,2008 Locations regardless of what may be shown on nor DRB approved graphically represented document of 437B.

20. The April 19, 2011 Decision, determination “ “for the following reasons :”

(i) “Zoning permits(s) have been approved.”

(ii) “The alleged violations relative to setbacks, lot coverage and additional violations have been adjudicated by the Superior Court, Environmental Division on a bench ruling; final judgment order supporting this ruling pending.”

(iii) The subdivision plat was approved and not appealed. The plat is filed in Land Records under Map Slide 437 B (filed June 1, 2009). As this an unappealed decision, it is final and cannot be contested pursuant to 24 V.S.A. § 4472 (d).”

are not correct legal or factual basis or determinative of CDO Violations.

21. Violation of CDO is non- discretionary and literal. Either it[the DRB Approved Vacant Lot” has the Minimum of 20’ Rear Yard Setback as required by CDO or the DRB Approved Vacant Lot does Not. OR stated slightly different facts but the same results Violation of CDO is non- discretionary and literal. Either it[the Vacant Lot as shown on the Document found at 437 B ” has the Minimum of 20’ Rear Yard Setback as required by CDO or the 437 B shown Vacant Lot does Not. In either case the “Vacant Lot ‘s rear Yard Setback is 15’ not the minimum required 20’ in all of the RL underlying Zoning District or Zone. Because the Zoning Permit of the Certificate of Occupancy has been issued, may prevent a NOV for a civil offence fine as to the 15’ Rear Yard Setback on the Vacant Lot. However the 15’ is still a CDO Article 5, Part 3 “Nonconformity” –Not CDO compliant, and no subsequent permit of the City may make the 15’ CDO Compliant absent a legislative retroactive change in the legislative CDO provisions.

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22. NOT BEING CDO COMPLIANT the City is required to Enforce its CDO Provisions and that the Vacant Lot as to this NOT CDO COMPLIANT non conformity which because of Article 5 Part 3 requires that all actions or Land Development on the Vacant Lot following January 16,2009 be considered under the provisions of Article 5 Part 3 as Conditional Use, Structures ,Lot(s) and or Subdivision(s).

The City may be barred from bringing a NOV specifically, but the DRB is not bared from revoking or seeking the revoking of the Zoning Permit 10-10- 042 on the basis that:

1. The 6,020 sf DRB Approved Vacant Lot with a 15' Rear Yard Setback has ever had a Mylar properly recorded prior to June 16,2009 as required by this DRB December 17,2008 Decisions
2. Sherrill N. Musty by submitting her June 4,2010 application for ZP 10-10-042BA , the June 4,2010 Application itself is a Sherrill N. Musty “Representation” as an affirmative misrepresentation to the DRB ,that the DRB had in fact approved a 7,220 sf Vacant Lot- which approval by this DRB is not true. Such miss representation subjecting Sherrill N. Musty ‘s Zoning Permit [even if on appeal] to be revoked by the DRB for the misinformation as represented by Sherrill N. Musty Application.

23. Violations of CDO ,[which have not been appealed] , are NOT before the Superior Court Environmental Division In Re: Musty Permit: Superior Court Docket No. 174-10-10 Vtec in reference to Zoning Permit 10-10 42BA , and the *de novo* request for a similar Construction Permit .

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Musty Permit Docket No. 174-10-10 is Not Violation of CDO nor NOV proceedings .

The Environmental Court and the Environmental Courts determination of the *de novo* Application of Sherrill N. Musty is not jurisdictional determinative of, or if, there is a CDO Violation. Its jurisdictional limitation is based on Sec 4472(d) applied to the act(s) or Action(s) and Decision (s) of the City. May and then, should, a *de novo* Construction permit be issued by the Court or the City be directed to issue such a new Construction Permit pursuant to CDO. Pursuant to CDO requires a determination under Article 5 Part 3 Conditional Uses based on the 15' Rear Yard Setback.

24. In raising the reasons cited by the April 19,2011 response it appears the Code Enforcement Office response either ignored or overlooked Paragraphs 6-8 of the Complaint of CDO Violations ,set forth for ease of reference below ,or is an intentional unnecessary [in common parlance] act or acts of “Stonewalling” .

“6. To be clear this complaint is NOT requesting any determination that the actions complained of are illegal, or not valid, nor not final , in the context of the jurisdictional issues which are the providence of the Environmental Court or the Supreme Court; under the finality provisions of 24 V.S.A. §4472 they are final and valid but not CDO compliant. They are ultra vires nonconformities. They are CDO Violation(s).

[See 2004 Decision of Spaulding Docket No. 131-8-03 Vtec {2004 Decision and Order:

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However, it is important to note that the fact that no party appealed these determinations of the Administrative Officers and they became final did not somehow transform the property into a conforming lot for the future. Rather it is still non-conforming. Any future applications will have to be handled under the City's then applicable CDO authority for nonconformities such as Article 5 Part 3 of CDO.

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7. This complaint is solely and exclusively : is or are the acts or decisions or conditions individually and or collectively as they exist [during the period September 28,2008 to date] (or are proposed to exist) , in “literal” compliance with the terms of the Burlington Comprehensive Development Review Ordinances [CDO]?

8. For purposes of this complaint and the requested enforcement a violation of the CDO ordinance, individually and or collectively, shall also be referred to as “Non CDO Compliant” and is synonymous with a “Violation(s) of this ordinance” as used in CDO Sec 2.7.5 Observation or Complaints of Violation. – Violation(s) equals non- compliant pursuant to CDO.”

25. The separate appeal of the DRB discretionary approval of the Zoning Administrators June 18,2010 granting of Zoning Permit 10-1042BA [DRB Construction Permit for ease of identification] has no bearing on is there or is there not a CDO violation such as the “Absence of a required 20’ Rear Yard Setback” Nor does the *de novo* submission of Sherrill N. Musty for a new Construction permit. The Only relevance is inferential, [inferential of the existence of the dimensional CDO Violation] since the absence of a 20’ Rear Yard Setback has been confirmed at each step in the process of the City and or Sherrill N. Musty since September 30,2008.

26. The same non relevance as to the Absence of the Minimum required 20’ Rear Yard Setback and therefore, a daily reoccurring CDO violation . The placing of record of the

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document found at Map Slide 437 B has no bearing on is there ,or is there not, CDO

Violations such as the absence of the 20' CDO required Rear Yard Setback DEPARTMENT OF PLANNING & ZONING

27. The Recorded document found at Map Slide 437 B , HOWEVER does confirm that a NON CDO COMPLIANT 15' Rear Yard Setback on the DRB Approved Vacant Lot again is graphically confirmed.

28. The 437 B Document is some inferential evidence that Sherrill N. Musty, the Property Owner is and has since June 1,2009 represented to all who have constructive or actual knowledge of the Document as found in Map Slide 437 B ; that the DRB Approved Improved Lot[Closest to Crescent Road] has a 15' "Rear Yard Setback" is direct evidence of CDO being Violated an another CDO Violation .

29. The real relevance of the document as found of record at Map Slide 437 B since June 1,2009, is not that it is being contested in this Complaint of CDO Violations BUT THAT the document of record at Map Slide 437 B , on its face within its four corners is itself direct evidence of numerous CDO violations ; in addition to the lack of the Minimum "...but in no event less than 20' Rear Yard Setback.

30. Appellant request , after the requested New Information Documents of 1-3 are reviewed or determined not to have existed, or no longer in existence within the DRB records as based on this Complaint of CDO Violations[Composite Exhibit 1 as supplemented by this filing

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and the testimony argument and evidence to be presented to the DRB that the DRB carry out its charged duty to see that all of the terms and provisions of the CDO are literally enforced so as to be in literal compliance with the legislative provisions of the CDO.

Second; to take note of the Zoning Officers positions stated but also to, require the diligent and thoroughly investigated factual basis of the Complaint and to determine that there are in fact CDO violations embodied in the Complaint.

Third ; after carrying out the provisions above within the reasonable Quasi- Judicial timely actions of the DRB ,for the DRB to determine and declare specifically the numerous Comprehensive Development Review Ordinance Violations individually ,separately and or collectively, without limitations as are in fact VIOLATION(s) of CDO, without limitation, the following be declared CDO VIOLATIONS.:

31. CDO Violation # 1 : The DRB APPROVED VACANT LOT's failure to have a CDO Compliant minimum 20' Rear Yard Setback in violation of CDO Table 4.4.5-3 Residential District Standards . “ but in no event less than 20' ”.

CDO Violation # 2 The Document as found in Map Slide 437 B of the City of Burlington's Land Records, as of June 1, 2009, is Not in compliance with CDO § 10.1.3 (c) as not being Properly Recorded as provided for in § 10.1.11(a) and therefore CDO non- Compliant.

[Enforcing CDO literally, as the DRB and the City are required to do, the word
 “Properly” used in the context of recording Final Plat mylars in the city’s land
 records is a legislative mandatory directive (at least) which as all CDO requires
 literal CDO compliance with § 10.1. 11(a) ; §10.1.11 (b) as well as §10.1.11(c).]

CDO Violation #3 The Document as found in Map Slide 437 B of the City of
 Burlington’s Land Records, as of June 1, 2009, is Not in compliance with CDO §
 10.1.11 (a) because:

CDO Violation #3 (a) The “Applicant’s [Sherrill N. Musty’s] certification” as
required by #3 of the #1-9 certification as set out, word for word, “as every shall
 carry” in Sec 10.1.11.(a) 3. does not appear at all on the recorded document found
 at 437 B.

(a) (1) The certification which appears closest to the “Applicant’s[Sherrill
 N. Musty] required by CDO certification”, (also noted as #3), entitled
 “Subdividers” certification as set out, word for word, on 437 B is not the
same as § 10.1.11.(a) 3 “Applicant’s certification”.

(a) (2) Even if the certification in paragraph (a) (1) immediately above, were
 sufficient or the same, said certification is and has not been executed ,
signed or endorsed by Sherrill N. Musty, or anyone else on her behalf.

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CDO VIOLATION # 4 Pursuant to § 10.1.11 # 1 and # 6 of the 1-9 certifications requires the City Engineer's certifications as set forth ,word for word, as Certification # 1; and a separate Certification for the signature and certification or endorsement of the City Engineer for certification #6.

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Certificate #1 appearing on the document 437 B is not and has not been signed , executed or endorsed by the City Engineer as required by Sec 10.1.11 (a). 1 and is not CDO Compliant.

CDO VIOLATION #5 Certificate # 9 of the Chair of the DRB states it was signed , executed and/or endorsed on May 19,2009 ; witnessed by Scott Gustin (presumably the same day). The Chair's signature , execution or endorsement by the Chair of the DRB, two days prior to the signature execution and or endorsement of the City Fire Marshal on May 21,2009 is Not CDO compliant. [See Below. 5.1) and 5.2)]

5.1 Certificate # 8 the "Certificate of the City Fire Marshal" as stated on Map Slide 437 B signed , endorsed or executed on the document found at 437 B on 5/21/2009 after, in point of time, after Certificate # 9 as signed by the Chair is in Violation ,as to timing of §10.1.11(a) Certification #9 and in Violation of §10.1.11 (c) as a change in the document referred to as the Mylar of the Final Subdivision Approval Plat made after the Chair Signature has been placed on the document, without going back to the DRB for approval.

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CDO VIOLATION #5 The sequence of signatures is not CDO
Compliant. CDO VIOLATION #5 HOWEVER also consists of a much
more serious CDO Violation :

5.3 As part of the changes made on the Document by Sherrill N. Musty, or on her behalf, which was later to become the document as found in 437 B , without going back to the DRB for approval [See § 10.1.11 (c)]of the changes made to the DRB's location of the "Common Boundary Line. " This non authorized by the DRB Material change of the location as "APPROVED" by DRB December 17,2008 applied to Approved Vacant Lot, and the DRB December 17,2008 applied to the Approved Improved Lot . [Without prior or subsequent DRB Approval] Sherrill N. Musty moving the "Common Boundary Line Location , 12' East, or about a 20% change in area of the Approved Vacant Lot- without DRB Approval before or after.

IS NOT CDO COMPLIANT and therefor a CDO VIOLATION.

5.4 It is not known, but it is the Duty of the Zoning Officer and this DRB to ascertain as part of their good faith CDO required investigation of the alleged CDO violations - to determine What "IN FACT" and "When in FACT" was on the Document as of the date and time May 19,2009 that Austin Hart, as "Chair", Signed the document? Is this the same document which later is recorded in Map Slide 437 B as of June 1,2009, without changes?

That is currently unknown. The first noted received document in the City Files, produced or examined to date, reflects that it was not until June 17,2009 that the change in size of the

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Approved Vacant Lot ; which was approved as a 6,020 sf Vacant Lot; which because of the non DRB approved change by Sherrill N. Musty of the “physical Location” of the previously set location of the Common Boundary Line. The note of Scott Gustin June 17,2009[DONE at the Request of Sherrill N. Musty] is the first date or evidence of a written notation appears in the official file reflecting that the size of the Vacant Lot was now to be considered as 7,220 sf to be correct with that which is represented on the Document as found in 437 B. NOTE: NOT CORRECT WITH THE DECEMBER 17,208 DRB Approval , BUT CORRECT WITH THE SELF CHANGED BY SHERRILL N. MUSTY OR HER AGENTS ,DOCUMENT FOUND IN 437 B.

There is no written notation in the City Files ,as produced and examined to date that indicates that Scott Gustin or any other agent of the City ever informed the Austin Hart, as “Chair” on or before May 19,2009 , that there had been a material change made by Sherrill N. Musty to the physical location of the Common Boundary Line. [Note Also Austin Hard had recused himself from any of the deliberative discretionary actions of the DRB. In reference to the Musty Submissions.]

Nothing of record that Austin Hart, as Chair” in performing his ministerial duty to sign Plat Certifications, indicates that he knew or should have known that the Common Boundary Line and other material changes had been made by Sherrill N. Musty.

The Chair new ,[upon information and belief based on prior practices and reasonable inquiry under the Circumstances] what the official records of the DRB stated. Those records of the

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DRB stated that there was a DRB approval of a 2 Lot subdivision December 17,2008 of the Musty Property. The Chair knew ministerially that May 19,2009 was within the 180 day period subsequent to December 17,2008. The Chair had no actual knowledge, or any reasons to know of any material changes, because they were either not on the Document when the Chair Signed May 19,2009 (or hidden in plain sight) and that if Scott Gustin knew May 19,2009 he had not informed the Chair or alternatively that Scott Gustin did not know of the Common Boundary Line changes made by Sherrill N. Musty until June 17,2009 which was 16 days after the fact.

It is unknown as a matter of record fact what was on the document which the Chairs signature appears bearing the date May 19,2009 or on the document subsequently recorded June 1,2009 in Map Slide 437 B.

What is known is the document as found in Map Slide 437 B has at least the following significant and substantive changes or modifications in the context of the DRB's Prior Approval and in the context of literal administration of CDO as it applies to all forms of Land Development which were NOT APPROVED BY THIS DRB December 17,2008 as follows:

1. The Common Boundary Line was moved , from its prior DRB approved location to a different location located physically 12' East by or at the direction of Sherrill N. Musty. [a change of about 20% of the size and location of the Vacant Lot. Significant as to Location and CDO related calculations of total maximum allowable Lot Coverage expressed as a percentage of Lot Area.]

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2. The Rear Yard Setback ON THE DRB APPROVED IMPROVED LOT was DRB approved at a CDO compliant 27' and as shown on the Document of 437 B is now shown as having a NOT CDO COMPLIANT 15' Rear Yard Setback on the "APPROVED IMPROVED LOT. [A separate CDO VIOLATION].
3. As approved and confirmed by the DRB December 17,2008 Decisions and Findings of Fact the Approved Improved Lot was stated in the DRB's Findings of Fact to have 2,866 sf of CDO Lot Coverage stated in the DRB's Findings of Fact to constitute 32.1% of Lot Coverage, in the RL underlying Zone which RL Zone allowed 38.5% as a maximum. The document as found in 437 B reflects that the percentage of Lot Coverage to be 40% which being greater than 38.5% on its face is a presumptive CDO Separate Violation of §Table 4/4/5-3 even with the additional 10% bonus for residential amenities of note #1 bringing the total to 38.5%.]

CDO VIOLATION #6

Prior to the endorsement of the final plat, the city engineer and the administrative officer shall check all documents to be filed to ascertain that they are as approved. On the face of or within its four corners of the document in 437 B there are fewer than Nine Certifications present on 437 B, and of those present some are not signed ,executed nor endorsed and all nine are Required by § 10.1.11(a)

[This failure of the designated agents of the City to have properly discharged their duties and employee responsibility to the City and the Public, is

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acknowledged may best be left for proper and full resolution in another forum.] HOWEVER Sherrill N. Musty's submission of the Document as recorded in 437 B ,to the DRB June 4,2010, is direct evidence of CDO Violation #6 ; because the Nine Certifications not being either all present and properly executed pursuant to the literal provisions of CDO § 10.1.11(a) creates a separate CDO Violation when Sherrill N. Musty (seeking to record a Final Plat Mylar submits the same to the City Clerk) with full prior knowledge that :

- (i) All nine Certifications, including the certification #3 to be signed by Sherrill N. Musty, individually [which is not signed or executed by Sherrill N. Musty] are not present nor properly executed.

Sherrill N. Musty submission to the City Clerk is part of the ministerial process of finalizing the DRB's 2 – Lot subdivision, as submitted by Sherrill N. Musty is in error, not correct and with full knowledge actual or charged knowledge , that the 15' Rear Yard Setback is not CDO compliant and that the moving of the Common Boundary Line by Sherrill N. Musty has not been approved by the DRB ;and that changing the Common Boundary Line Location 12' to the East from where the DRB had approved the Location December 17,2008 has never been Approved by the DRB. All of these acts or

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failure to act of Sherrill N. Musty being incorporated into the

DRB Approval of the Subdivision by Standard Conditions #14

and #11 as errors or misinformation and constitute CDO

Violation #6..

CDO VIOLATION #7 All final plats as part of the final approval pursuant to Art 10 Sec 10.1.9 (a) Final Plat Approval Process (E) the plans and profiles of the sanitary sewer system showing the system as therein provided, together with a covenant of the Applicant that after the pumping station has been installed that applicant shall deed the same to the city in this case as later determined , a deed to a pump station located within the footprint of Applicants proposed house beneath the enclosed garage finished floor. No such covenant signed prior to January 16,2009 is on file with the City. Nor where the actual utility plans on file as required for Preliminary and Final plat approval, which occurred December 17,2008. In Violation of CDO § 10.1.9 (a).

CDO Violation #8 The Document as found in Map Slide 437 B of the City of Burlington's Land Records ,as of June 1, 2009, is in violation of CDO § 10.1.11 (b) in that it is not drawn in black permanent inks on three (3) to five) mil stable- base polyester film (mylar) .. nor has the surveyor as the Agent of Sherrill N. Musty

Properly under the rules and regulations of the State of Vermont accurately compiled or complied with the applicable rules and regulations as of June 1,2009.

Sherrill N. Musty, by submitting the same as part of the ministerial process of finalizing the DRB 2-lot “Approved” subdivision process because of Standard Conditions #14 and #11 is in Violation of CDO by such submission as the document is Not a Mylar as CDO Legislative Defined and Literally Enforced. .

CDO VIOLATION #9 Pursuant to Sec 10.1.11 (b) the final plat and all associated documents were not recorded in the office of the chief administrators officer within 180 days of the DRB’s approval December 17,2008 of the final plat -. That is on or before June 16,2009 in that there are no documents appearing in the Land Records between September 30,2008 to date which have the Chair of the DRB §10.1.11(a) certificate which shows :

As Approved by the DRB The Approved Vacant Lot of 6,020 sf with a 15’ Rear Yard Setback; and an Improved Approved Lot of 8,927 sf with a Common Boundary line between the 2 approved Lots located in the location Approved by the DRB December 17,2008. [For reference the Common Boundary Line as “APPROVED” located by the DRB December 17,2008 was 90’ West of the Western ROW line of CRESCENT ROAD.. NO SUCH plat survey mylar existed in the Land Records as of June 16,2009 the last day for compliance with the DRB December 17,2008 Approval Resolution [See Approval Condition #1].

[The 437 B Common Boundary Line , for reference is located 72’ west of the Western ROW of Crescent Road.]

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There is no (discretionary or not.) provision in the City's CDO legislative authority for determining there is No CDO violation because the document which reflects the CDO Violation has been approved by DRB, or Staff, or City Agents. Nor is there Authority to determine there is no violation because none of the acts have been appealed. Nor even that a request for a *de novo* "Construction permit" is pending on appeal.

The City May be able to defer to the Superior Court, or the Supreme Court, to determine how the Courts may wish to enforce the Decisions of the DRB and its agents, but City does not have the legitimate power to determine that no Violation exist because of the legal status of a Construction Permit *de novo* proceedings, which is not the Subdivision Permit which reflects the noted CDO VIOLATIONS.

NOTE this DRB is itself on notice directly of the CDO violation when this DRB issued its Decision in September of 2010 that a ZP " 10-10 42BA Construction Permit was proper to be issued even though the DRB and its staff are charged with the knowledge that the 15' Rear Yard Setback on the Vacant lot upon which the ZP was issued was not CDO Compliant. It is known at least Staff knew, with actual knowledge after June 17, 2009, that at some point of time Sherrill N. Musty had changed the Location of the Common Boundary Line without the prior actual deliberative approval by this DRB. What, when or if it at all did the Staff did or did not inform the DRB of these changes is unknown? It is submitted a reasonable reference to the DRB records, as may exist of the Hearings and deliberative

cessions will disclose that if so disclosed, it was not plainly disclosed to the DRB, not to the Chair.

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CDO VIOLATION #10

The Improved Lot existing structure, , as of the date of on or before September 25,2008 as part of the stated 2,866 of existing Improvement Lot Coverage by Staff as an adopted Finding of Fact by this DRB both November 18,2008 and December 17,2008 is Final. If so, then the location as shown on 437 B , of the rear yard existing deck or porch (as the western most part of the existing improvements, as a physical bricks and mortar location) is not CDO compliant. NOT CDO Compliant because the Western 5' of the represented Porch or Deck of lot coverage is located within the 20' required setback which by CDO may not intrude into the CDO required Rear Yard Setback.

NOTE: The Improved Lot is not on appeal .The subdivision Approval is not on Appeal, and has nothing to do with if the 437 B document was appealed or not. But if 437 B as a non-appealed Document physical locations are correct, it then reflects a separate CDO Violation as well as an actual Existing structure intruding into the minimum Required 20' Rear Yard Setback.. [437B shows there is only 15' between the western edge of the deck and the western Common Boundary Line .

CDO VIOLATION #11 The Vacant Lot , proposed structure,(s) as part of the stated 2,776 sf , as reflected on the plans of Sherrill N. Musty of June 18,2010 by Sherrill. N Musty's Submission of June 4,2010 of the same to this DRB is and was then a Sherrill N. Musty

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Certification and representation to this Board and the Public that in fact the DRB had approved the Vacant Lot in December 17,2008. Approved by the DRB resolution of said date. And the Vacant Lot as approved had a Rear Yard Setback of 15' and a revised Front Yard Setback of 35' were both CDO compliant.

A SHERRILL N. MUSTY REPRESENTATION THAT THE SIZE OF THE VACANT LOT TO WHICH THE JUNE 4,2010 Submission was directed as part of her representations to this DRB was that the Vacant Lot was 7,220 sf and that SAID 7,220 sf Vacant LOT HAD BEEN APPROVED BY THIS DRB DECEMBER 17,2008 and that this DRB had in fact approved a Final Plat Mylar which was and is to be found at Map Slide 437 B of the land records of the City of Burlington.

The above representations, as to the Approval of the change in the Common Boundary Line Location thereby increasing the Lot size of the previously approved Vacant lot was not and is not correct and is at least an error on the part of Sherrill N. Musty as miss- information, both of which constitute CDO Violation(s) #11

32. Be advised , submitted here with respect .; THAT the determination by the City as represented and set forth in the April 19' ,2011 determination as incorporated that ..."it is our determination that this is not a zoning violation for the following reasons:" as stated therein is not responsive to the written Complaint as submitted pursuant to § 2.7.5 of the CDO. . Is not a response showing good faith or due consideration after reasonable inquiry under the circumstances.

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33. Restating the position that the City has taken, in the most simplest form, is that the Vacant Lot with a 15' Rear Yard Setback, as approved by the DRB, and shown on a document of record , where CDO Table 4.4.5-3 (to be clear) always required a minimum of 20' is not a CDO Violation, because no one appealed the decision to approve the 15' Rear Yard Setback.

Some of the remedies which may not remain procedurally open to the City, because of the City's failure to timely appeal its own actions, but that does not change a not compliant 15' Rear Yard setback into a compliant CDO 20' Rear Yard Setback

The document of 437 B does not reflect what the DRB Approved as the 2 lot subdivision December 17,2008. The City has the current power and should exercise the power literally to have the nonconforming CDO noncompliant recording of the Document 437 B stricken from the public record – literal enforcement of CDO is mandated legislatively written Public Policy of the State ,the City of Burlington and this Board .

34.The position taken by the City, Staff, Department of Planning & Zoning, Department of Public Works ,or whoever is that it is not a violation of CDO because Sherrill N. Musty has a *de novo* request for an new construction permit pending(materially different than that of June 4,2010,) maybe grounds to defer action, but it is a direct act of bad faith to determine that there is no violation of CDO because of the Pending action.

35. The act or acts are in direct violation of the obligations imposed upon the City of Burlington pursuant to **CDO Sec 2.3.3 Powers and Duties** . Duties requiring the

administrative officer to , as in “**Shall**” “as mandatory and not merely directory”(pursuant to CDO) requiring the administrative officer to administer by investigating fully the entire written complaint. **Administer the provisions of CDO “literally”** , and not to permit as a result thereof any administrative action which would permit or tend to permit any land development [subdivision, lot, land building permit curb cut ,blasting permit, etc.] individually or collectively use that is not strictly and literally in conformance with the CDO.

Dated this 25day of April 2011



Frederick P. Tiballi

Appellant

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that proceeding" suggests that there can be more than one appealable decision within a proceeding. The appealability of preliminary plat approval, if such a right of appeal exists, does not affect whether preliminary plat and final plat approval are part of the same proceeding. In re Carroll, 2007 VT 19, 181 VT 383, 925 A.2d 990.

Cited. *Cited in Town of Waterford v. Pike Industries* (1977) 135 VT 193, 373 A.2d 528; *McLaughry v. Town of Norwich* (1981) 140 VT 49, 433 A.2d 319; In re Patch (1981) 140 VT 158, 437 A.2d 121; *Cadurie v. Marcotte* (1982) 141 VT 238, 446 A.2d 375; *Fleury v. Town of Essex Zoning Board of Adjustment* (1982) 141 VT 411, 449 A.2d 958; In re Maurice Memorials (1983) 142 VT 532, 458 A.2d 1033; In re 66 North Main Street (1984) 145 VT 1, 481 A.2d 1053; *City of Rutland v. McDonald's Corp.* (1985) 146 VT 324, 503 A.2d 1138; *Bottlewell v. Town of Fair Haven* (1987) 148 VT 8, 527 A.2d 225; *McGlynn v. Town of Woodbury* (1987) 148 VT 340, 533 A.2d 1187; *Chioff v. Winoski Zoning Board* (1989) 151 VT 9, 556 A.2d 103; In re McDonald's Corp. (1989) 151 VT 346, 560 A.2d 362; *Bloomberg v. Edlund Co.* (1989) 151 VT 559, 563 A.2d 995; In re Knapp (1989) 152 VT 59, 564 A.2d 1064; *Lewy v. Town of St. Albans Zoning Board of Adjustment* (1989) 152 VT 139, 564 A.2d 1361; *Nash v. Warren Zoning Board of Adjustment* (1989) 153 VT 108, 569 A.2d 447; In re Torres (1990) 154 VT 233, 575 A.2d 193; In re Duncan (1990) 155 VT 402, 584 A.2d 1140; In re Agency of Transportation (1991) 157 VT 203, 596 A.2d 358; *Leo's Motors, Inc. v. Town of Manchester* (1992) 158 VT 561, 613 A.2d 196; In re Lorum (1993) 160 VT 625, 648 A.2d 832 (mem.); *Valley Disposal, Inc. v. Central Vermont Solid Waste Management District*, 31 F.3d 89 (2d Cir. 1994); *Rosselli v. Chittenden County Transportation Authority* (1996) 165 VT 61, 674 A.2d 1284; In re Gaborault (1997) 167 VT 583, 704 A.2d 1163 (mem.); *Fenwick v. City of Burlington* (1997) 167 VT 425, 708 A.2d 561; *Town of Hinesburg v. Dunkling* (1998) 167 VT 514, 711 A.2d 1163.

Law Review Commentaries

Zoning variance administration in Vermont, see 8 VT. L. Rev. 371 (1983).

§ 4472. Exclusivity of remedy; finality

(a) Except as provided in subsections (b) and (c) of this section, the exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act, under this chapter or with respect to any one or more of the provisions of any plan or bylaw shall be the appeal to the appropriate panel under section 4465 of this title, and the appeal to the environmental division from an adverse decision upon such appeal under section 4471 of this title. The appeal to the environmental division, if not on the record, as allowed under section 4471 of this title, shall be governed by the Vermont Rules of Civil Procedure and such interested person shall be entitled to a de novo trial in the environmental division. If the appeal to the environmental division is on the record, according to the provisions of section 4471 of this title, it shall be governed by the Vermont Rules of Civil Procedure. Whether proceeding on the record or de novo, the court shall have and may exercise all powers and authorities of a superior court.

(b) The remedy of an interested person with respect to the constitutionality of any one or more of the provisions of any bylaw or municipal plan shall be governed by the Vermont Rules of Civil Procedure with a de novo trial in the superior court, unless the issue arises in the context of another case under this chapter, in which instance it may be raised in the environmental division. In such cases, hearings before the appropriate municipal panel shall not be required. This section shall not limit the authority of the attorney general to bring an action before the environmental division under section 4453 of this title, with respect to challenges to housing provisions in bylaws.

(c) The provisions of this section shall not be construed as preventing appeals to the supreme court in accordance with the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure.

(d) Upon the failure of any interested person to appeal to an appropriate municipal panel under section 4465 of this title, or to appeal to the environmental

division under section 4471 of this title, all interested persons affected shall be bound by that decision or act of that officer, the provisions, or the decisions of the panel, as the case may be, and shall not thereafter contest, either directly or indirectly, the decision or act, provision, or decision of the panel in any proceeding, including any proceeding brought to enforce this chapter.—Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974, No. 255 (Adj. Sess.), § 3, eff. April 9, 1974; No. 261, (Adj. Sess.), § 8, 1993, No. 232 (Adj. Sess.), § 49, eff. March 15, 1995; 2003, No. 115 (Adj. Sess.), § 107; 2009, No. 154 (Adj. Sess.), § 236.

History

Revision note—2004. In subsec. (a), substituted "Vermont Rules of Civil Procedure" for "Rules of Civil Procedure" to conform reference to V.S.A. style.

Amendments—2009 (Adj. Sess.). Substituted "environmental division" for "environmental court" throughout this code section.

—1993 (Adj. Sess.) Subsection (a): Amended generally.

—1973 (Adj. Sess.) Subsection (a) Act No. 255 added "except as provided in subsection (b) and (c) hereof" at the beginning of the subsection and added the second sentence.

Act No. 193 substituted "superior court" for "county court".

Subsection (b): Act No. 255 redesignated former subsec. (b) as subsec. (d) and added a new subsec. (b).

Act No. 193 substituted "superior court" for "county court".

Subsection (c): Added by Act No. 255.

Act No. 193 substituted "superior courts" for "county courts".

Act No. 261 substituted "section" for "subchapter" following "provisions of this".

Subsection (d): Act No. 255 redesignated former subsec. (b) as subsec. (d).

Act No. 193 substituted "superior court" for "county court".

ANNOTATIONS

- Availability of remedy, 3
- Constitutionality of bylaw or plan, 12
- Constitutionality of section, 1
- Construction with other laws, 2
- Court's powers and duties, 9
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- Failure to appeal, 13
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- Standing, 5

1. Constitutionality of section. This section, providing for trial de novo in superior court on appeal from decision of local zoning board, does not violate separation of powers provision of chapter II, section 5 of the Vermont Constitution by allowing court to perform legislative or executive function; rather, local zoning board performs quasi-judicial function. *Chioff v. Winoski Zoning Board* (1989) 151 VT 9, 556 A.2d 103.

2. Construction with other laws. A civil action for unconstitutional deprivation of property, in violation of 42 U.S.C. § 1983, is not dependent on the zoning appeal mechanism set out in this section; consequently, even though a person who has been denied a subdivision application chooses potentially bring an action under 42 U.S.C. § 1983 for violation of this section, he or she may litigate v. Town of Colchester (1988) 150 VT 249, 552 A.2d 785.

Claim under 42 U.S.C. § 1983. (1983) 150 VT 249, 552 A.2d 785. state law, is not dependent upon zoning appeal mechanism set out in this subchapter; and accordingly, complaint relying on the federal statute, of persons denied permit to house small used car business in their garage, was properly before the court. *Harvey v. Town of Waitsfield* (1979) 137 VT 80, 401 A.2d 900.

3. Availability of remedy. The availability of a variance is an essential part of the regulatory

2005 VT 92

In re Appeal of TEKRAM PARTNERS,
Century Partners and Judge
Companies

[888 A.2d 1160]

No. 04-049

Appeal from Environmental Court.
Martin and Katz, JJ.

¶ 13. Sandgate's motion for relief was without merit; it did not state with particularity the grounds for relief under Rule 60(b), nor did it provide a sufficient reason for its failure to file a response. See *Gardner v. Town of Ludlow*, 135 Vt. 87, 92, 369 A.2d 1382, 1385 (1977) (affirming the trial court's denial of Rule 59 motion without a hearing where motion insufficiently demonstrated that party's rights were affected by ruling, was poorly crafted, provided no excuse for the party's lack of diligence, and did not state with particularity the grounds relied upon for relief); *West*, 139 Vt. at 385, 428 A.2d at 1117 (applying *Gardner* to Rule 60(b) motion). Thus, the court did not err when it denied Sandgate's motion without a hearing.

¶ 14. Sandgate has not demonstrated that it is entitled to relief from judgment under Rule 60(b). The dismissal on the pleadings is the direct result of Sandgate's deliberate inaction, and Rule 60(b) does not exist to repair damage that results from a party's strategic errors. We therefore conclude that the superior court properly exercised its discretion when it denied Sandgate's motion for relief from judgment.

Affirmed.

2005 VT 92

In re Appeal of TEKRAM PARTNERS,
Century Partners and Judge
Companies

[888 A.2d 1160]

No. 04-049

Appeal from Environmental Court.
Martin and Katz, JJ.

¶ 1. July 28, 2005, Appellants Tekram Partners, Century Partners, and Judge Companies (hereinafter collectively referred to as Tekram Partners) appeal the environmental court's decision upholding three zoning violations issued by the City of South Burlington. Tekram Partners argue that the exclusivity-of-remedy provision in 24 V.S.A. § 4472 bars the City from raising certain violations because the City approved these disputed design features when it issued certificates of occupancy three years earlier. Tekram Partners further contend that nothing on the approved site plan or in the City's zoning ordinance imposes a requirement to "stripe" (i.e. paint) parking spaces. As to two of the violations raised on appeal, we reverse. Regarding the third violation, we conclude that the lines indicating parking spaces on the approved site plan are sufficient to impose a striping requirement and, therefore, we affirm the environmental court's decision to uphold the striping violation. The City cross-appeals from the environmental court's dismissal of an alleged zoning violation regarding the unapproved location of one garbage dumpster. Tekram Partners complain that the fifteen-year limitations period under 24 V.S.A. § 4454 (formerly § 4496¹) precludes the City's enforce-

¹ In 2004, the Vermont Planning and Development Act, 24 V.S.A. § 4301 et seq., was substantially reorganized, whereby many sections were added,

ment of this violation because the dumpster has been in the same location since 1975. We reverse on this issue.

¶ 2. We first consider the alleged violations regarding the paving of two triangular green areas and the conversion of retail space to storage space. The City alleges these violations on the basis that Tekram Partners deviated from the site plan without the necessary approval from the City. Tekram Partners appeal the violations, arguing that the City's zoning administrator approved of the disputed areas by issuing certificates of occupancy for Tekram Partners' Four Market Street Building. Tekram Partners argue that § 4472(a), therefore, bars the City from enforcing violations in these areas because the City failed to timely appeal the zoning administrator's decision to issue certificates of occupancy for the project. The environmental court upheld these violations, reasoning that the disputed design features deviated from the project as permitted, and that Tekram Partners had not received the necessary approval from the City for these deviations. Without analysis of the potential effect that the certificates of occupancy had in ratifying the nonconforming design features, the environmental court concluded that Tekram Partners' § 4472(a) argument was "not persuasive."

After reviewing the record and the applicable zoning regulations, we hold that the environmental court's conclusion on this issue is not supported. The City's enforcement of these violations three years after its own zoning administrator issued certificates of occupancy that apparently cover the entire Four Market Street project amounts to the type of unimply

collateral attack on the administrator's decision that is expressly barred by § 4472(a). Accordingly, we reverse the environmental court's decision to uphold these violations.

¶ 3. The alleged violations occur at the northeast corner of the Four Market Street Building, one of five structures within a larger Planned Unit Development (PUD) known as the 100 Dorset Street Complex. On March 12, 1996, the City's planning commission issued final plat approval of the PUD.² Among other things, the City approved a 15,000 square-foot building at Four Market Street.

¶ 4. On July 3, 1997, Tekram Partners obtained a zoning permit from the City authorizing construction of the Four Market Street Building. During construction, Tekram Partners paved two triangular areas at the northeast corner of the building and installed an overhead door for access to the part of the building that would be used for storage at this

² After construction of the Four Market Street Building was complete, Tekram Partners sought the City's approval for changes that had already been built. The changes were minor, and the City approved an amended final plat in a decision dated June 9, 1998. This decision is, however, technically invalid because the amended final plat was never recorded in the city land records. See 24 V.S.A. § 4463(b) (invalidating approved plats that are not recorded in the city land records) (formerly § 4416). After reviewing the arguments of both parties regarding the validity of the unrecorded plan, the differences between the plans have not been shown to have any bearing on the areas at issue in this case. Therefore, our analysis proceeds according to the development that was approved by the City's decision dated March 12, 1996.

corner. When construction was complete, Tekram Partners requested a certificate of occupancy from the City for the Four Market Street Building. Pursuant to § 27.20 of the South Burlington Zoning Regulations, once Tekram Partners notified the City that the Four Market Street project was ready for use and occupancy, the City's zoning administrator then had a duty to make a final inspection of the premises and issue a certificate of occupancy "if the project [was] found to conform with the provisions of [the] ordinance." S. Burlington Zoning Regulations § 27.202.

¶ 5. In December 1997, the City's zoning administrator conducted an inspection of the Four Market Street Building pursuant to Tekram Partners' request. On December 11, 1997, the City's zoning administrator issued three certificates of occupancy for the retail units that comprise the Four Market Street Building. Attached to the certificates was a sketch depicting the floor plan of the building and indicating the square footage of each retail unit. Also included on this sketch was an area labeled "Mechanical 580 SF" which corresponded with the northeast corner of the building where the paved areas and the overhead door had been constructed. The environmental court found that the two paved areas and the storage area would have been visible to the City's zoning administrator at the time of inspection. The court also found that at no time during the inspection did the zoning administrator alert Tekram Partners to the possibility that the paved areas or the storage area were inconsistent with the approved plan and, therefore, in violation of the zoning ordinance. The findings also indicate that Tekram Partners considered the issuance of the certificates as final approval of the Four Market Street Building for which no further certificates of occupancy were required.

¶ 6. Three years later, on September 26, 2000, the City issued a notice of violation to Tekram Partners, which alleged, among other things, that the paved areas and the storage area located at the northeast corner of the Four Market Street Building violated the zoning ordinance. Tekram Partners timely appealed the notice of violation to the City's development review board, which upheld the notice of violation. Thereafter, Tekram Partners appealed to the environmental court, which dismissed some of the violations, but upheld the violations regarding the paved areas and the storage area. Tekram Partners now appeal from the environmental court's decision.

¶ 7. We now consider whether 24 V.S.A. § 4472(a) precludes the City from enforcing the alleged violations regarding the two paved triangular areas and the storage area at the northeast corner of the Four Market Street Building. When determining whether the trial court's conclusions are consistent with the applicable law, we exercise plenary, nondeterminative review. *Stigler Found., v. Town of Norwich*, 174 Vt. 129, 130, 807 A.2d 442, 443-44 (2002). We will uphold the court's conclusions if they are consistent with the controlling law and are supported by the findings. *Id.* On this issue, the environmental court's conclusion is not supported by the findings and largely ignores the effect of § 4472(a).

¶ 8. An interested person or municipality³ may file an appeal with the appropriate panel within fifteen days of any decision or act taken pursuant to a provision of any plan or bylaw. 24 V.S.A. § 4465 (formerly § 4464). This is the exclusive remedy for contesting local zon-

³ 24 V.S.A. § 4465(b)(2) provides that an interested person may mean, among other things, "[t]he municipality that has a plan or a bylaw at issue in an appeal."

ing decisions or actions. *Id.* § 4472(a). We have "strictly enforced" this exclusivity-of-remedy provision to ensure timely review of all zoning disputes, thereby assuring parties of finality. *City of S. Burlington v. Dept. of Corr.*, 171 Vt. 587, 588, 762 A.2d 1229, 1230 (2000) (mem.) (internal quotations omitted). Section 4472(a) pertains to "any decision or act taken . . . with respect to . . . any plan or bylaw." Thus, there is no dispute that this provision prescribes the manner of appealing a certificate of occupancy issued by the City's zoning administrator. And with the passing of three years between the zoning administrator's issuance of the certificates of occupancy and the notice of violation that gives rise to this case, the limitations period for appeal has long since expired. The disposition of this issue thus becomes whether the certificates of occupancy the zoning administrator issued for Four Market Street approved the areas the City now alleges are in violation of its zoning ordinance.

¶ 9. We conclude that the certificates issued for the Four Market Street Building were the final and only certificates required under the City's approval process; therefore, they had the effect of approving the disputed design features. Tekram Partners requested and received certificates of occupancy from the City for the Four Market Street Building. The disputed design features were in plain view when the City's zoning administrator inspected the building. Although the City maintains that the approval stemming from the certificates stops at the walls of the Four Market Street Building, it has not demonstrated that a separate process existed for gaining approval of the paved areas that are contiguous with the northeast corner of the building.

¶ 10. Nothing in the findings contradicts our conclusion that the certificates of occupancy apply to the entire Four Market Street project, including the

storage and paved areas. Tekram Partners have introduced valid certificates of occupancy along with a sketch depicting the storage area at issue that was attached to the certificates when they were issued. The City contends that the certificates do not encompass the paved areas or the storage area. In responding to Tekram Partners' argument in the environmental court, however, the City failed to adduce any evidence indicating how it would otherwise approve of the constructed areas immediately surrounding the Four Market Street Building, if not pursuant to the certificates of occupancy it issued in December 1997.

¶ 11. The City's assertion that the certificates granted only partial approval to the Four Market Street Building lacks sufficient support. The City's claim is based on the fact that each certificate included a specific square footage notation, and thus approval was limited to the areas encompassed by the notation. But the environmental court found that Tekram Partners believed otherwise, and thus we can infer that the administrative officer who issued the certificates gave no indication that they did not apply to the project area around the building. Unless the areas surrounding the building were also approved for use by the City, approval for the retail space alone would have been of little use because the public would have no means to access the businesses. In the absence of evidence that the City had a separate process for granting certificates to other aspects of the project beyond the retail space, it is illogical to conclude that the certificates did not affect all aspects of the project on which use of the retail space depended.

¶ 12. Our conclusion that the three original certificates encompassed all project areas, not just the interior retail space, is bolstered by the fact that the City has not issued a violation to Tekram Partners on the basis that they are using the exterior areas without a certificate of

occupancy. Under the City's zoning regulations, it is illegal to "use, occupy or permit the use or occupancy of any land or structure or part thereof created, erected, changed, converted . . . until a certificate of occupancy/compliance is issued therefore by the Administrative Officer." S. Burlington Zoning Regulations § 27.20. As the environmental court's findings indicate, the City has alleged nine violations against Tekram Partners. It is clear that the City has reviewed every aspect of the PUD in an attempt to hold Tekram Partners responsible for even the most minor and technical violations. Thus, the City's failure to cite Tekram Partners for using and occupying the nonretail project areas without a valid certificate of occupancy is a glaring omission that is at odds with its claim that the certificates of occupancy issued in December 1997 did not extend beyond the retail areas of the building.

¶ 13. The environmental court concluded that Tekram Partners had created the disputed design features without obtaining the necessary approval from the City. But the disputed design features had already been constructed when the City issued the certificates of occupancy for Four Market Street. An ex-hibit-of-remedy claim is not surmounted by proving that disputed design features deviate from an approved plan. Where § 4472(a) is at issue, the nature of the disputed design features as they pertain to the plan becomes irrelevant. The question before us is not whether a zoning violation exists, but whether the City's attempt to enforce zoning violations with respect to the disputed design features is a collateral attack on the certificates issued in 1997. Tekram Partners have shown that valid certificates of occupancy for Four Market Street were issued by the City, and have asserted that these extend to all aspects of the project that were plainly visible to the issuing administrative officer at the time of his inspec-

tion. The City's evidence is insufficient to overcome this claim. Thus, we conclude that the City approved of the paved areas and the storage area, as built, when it issued the certificates of occupancy in 1997. Though this may have been an error on the administrative officer's part, § 4472(a) mandates the procedure for correcting such an error. The City's failure to follow that procedure precludes the City from enforcing violations regarding areas it approved three years earlier. Accordingly, we reverse on this issue.

¶ 14. We now decide whether Tekram Partners' failure to paint six parallel parking spaces located along the northeast corner of the Four Market Street Building violated the City's zoning ordinance. We review this question of law de novo. The City alleges this violation based on the fact that the approved site plan depicts parking spaces in this location, and argues that the parking spaces do not exist until they are painted. Tekram Partners complain, however, that there is nothing on the site plan, nor is there any provision of the City's zoning ordinance, that requires parking spaces to be painted. The environmental court found that a requirement was implied in the creation of parking spaces. We affirm

¶ 15. Before the City could approve the PUD, Tekram Partners were required to submit a site plan that depicted the layout of all buildings and parking areas. S. Burlington Zoning Regulations § 26.651(c). On March 12, 1996, after reviewing the site plan, the City's planning commission issued final plat approval for the PUD conditioned upon the construction of a minimum amount of parking spaces. See S. Burlington Zoning Regulations § 26.25 (mandating and establishing minimum requirements for parking associated with land development); 24 V.S.A. § 4416 (allowing such requirements to be imposed by municipal bylaws). Once the City approved the site plan and permitted commencement of development, Tekram Partners were bound to conform its construction to the plan. See S. Burlington Zoning Regulations § 27.10 (requiring an applicant for a zoning permit to submit information that demonstrates compliance with the zoning regulations prior to the commencement of development). The approved site plan indicates that six parallel parking spaces were to be created along the northeast corner of the building at Four Market Street.

on this issue because the disputed parking spaces are striped on the approved site plan.

¶ 16. There is no dispute that a paved area exists at this location for six parallel parking spaces. But unless and until the spaces are painted, motorists will be unaware that this area has been designated for use as parking. More importantly, the disputed parking spaces are striped on the site plan. We conclude that the existence of stripes on the approved plan is sufficient to impose a requirement that newly created parking spaces must be painted. Accordingly, we affirm the environmental court's decision upholding this violation.

¶ 17. Lastly, we consider the City's cross-appeal regarding the placement of

one garbage dumpster along the north side of the 100 Dorset Street Building, a separate building in the PUD complex. This is also subject to de novo review. The approved site plan indicates the location of four service areas along the north and east side of the 100 Dorset Street Building. The City alleges that Tekram Partners are in violation of the zoning regulations by maintaining one dumpster outside the approved service areas, in an area depicted as "Proposed 300SF Storage" on the site plan. The environmental court dismissed the violation finding no reason why this area could not be used to locate a dumpster in compliance with the approved plan. On the contrary, the approved plan provides the reason why the designated service areas are the only places a dumpster can be located in compliance with the plan.

¶ 18. Tekram Partners sought and obtained approval to locate dumpsters in the designated service areas and has used the service areas exclusively as locations for dumpsters. That the designated service areas are the exclusive locations for dumpsters should not be in question in light of Tekram Partners' submission of the PUD site plan indicating the service areas, and the City's subsequent approval of their locations. Tekram Partners complain that they have maintained a dumpster in the disputed location for over fifteen years, and therefore the City's attempt at enforcing a violation is barred by the limitations period in 24 V.S.A. § 4454 (formerly § 4496). Section 4454 does not shield Tekram Partners from an enforcement action in this case, however, because there was no basis for the City to allege a violation until 1996, when the four service areas were created and the disputed area was designated as proposed storage. Accordingly, we reverse on this issue.

Affirmed in part and reversed in part.

Nonconformity: A nonconforming use, structure, lot, or parcel.

- (a) **Nonconforming Lot or Parcel:** A lot or parcel that does not conform to the present bylaws covering dimensional requirements, including parking, but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaw, including a lot or parcel 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.
- (b) **Nonconforming Structure:** A structure or part thereof not in conformance with the current zoning regulations covering building bulk, maximum height, and disposition on lot, area, or yards, where such structure conformed to all applicable laws, ordinances, and regulations prior to the enactment of such zoning ordinance, including a structure 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.
- (c) **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. 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.

(b) Appeal to Environmental Court - On the Record:

If the city council has determined (or been instructed by the voters) to provide that appeals of DRB determinations shall be on the record, has defined the magnitude or nature of the development proposal shall be subject to the production of an adequate record by the panel, and has provided that the Municipal Administrative Procedure Act shall apply in these instances, then an appeal from such decision of the DRB shall be taken on the record in accordance with the Vermont Rules of Civil Procedure.

Sec. 12.2.4 Exclusivity of Remedy

Except as otherwise provided by state statute, the exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act, under this ordinance or any one or more of its provisions shall be the appeal to the DRB, and the appeal to Vermont environmental court from an adverse decision upon such appeal.

Except as otherwise specified by statute, the exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act, under this chapter or with respect to any one or more of the provisions of any plan or bylaw shall be an appeal to the DRB, and the appeal to the environmental court from an adverse decision upon such appeal. The appeal to the environmental court, if not on the record, as allowed under 24 VSA Section 4471, shall be governed by the Vermont Rules of Civil Procedure and such interested person shall be entitled to a de novo trial in the environmental court. If the appeal to the environmental court is on the record, according to the provisions of 24 VSA Section 4471, it shall be governed by the Vermont Rules of Civil Procedure. Whether proceeding on the record or de novo, the court shall have and may exercise all powers and authorities of a superior court.

Sec. 12.2.5 Finality

Upon the failure of any interested person to appeal to the DRB or to the environmental court, all interested persons affected shall be bound by such decision or act of such administrative officer, such provisions or such decisions of the DRB, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision in any proceeding, including without limitation, any proceeding brought to enforce this ordinance.

09-31150 2-Lot Sub. Division

1. *The requirements of the underlying zoning district(s) and all applicable overlay district(s) as set forth in Article 4*

See Article 4 of these findings.

2. *The review criteria for Conditional Use and Major Impact in Article 3, Part 5 where applicable*
Not applicable.

3. *The requirements of Article 5 with regard to Special Uses and Performance Standards as applicable*

See Article 5 of these findings.

4. *The land division and site development principles and design standards in Article 6.*

See Article 6 of these findings.

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Glenn Jarrett

I move that the Board grant combined preliminary & final plat approval for a 2-lot subdivision (no development included), located at 85 Crescent Road in the RL zone in accordance with Articles 4, 5, 6, and 10. Approval of the subdivision is subject to the following conditions:

1. Within 180 days of the date of final approval, the subdivision plat mylar, with all applicable endorsement signatures, shall be filed with the City Clerk per Sec. 10.1.11 of the Comprehensive Development Ordinance. Failure to do so shall render void the final plat approval.
2. **Prior to filing the property plat mylar** with the City Clerk, a revised plat plan showing the front yard setbacks on the two adjacent properties to the south and a compliant front yard setback on the proposed vacant lot shall be submitted, subject to staff review and approval.
3. Application to develop the proposed building lot shall include a tree retention plan.
4. Standard conditions 1-18.

Seconded: Eleanor Briggs Kenworthy

Vote: 6-0-0, motion carried

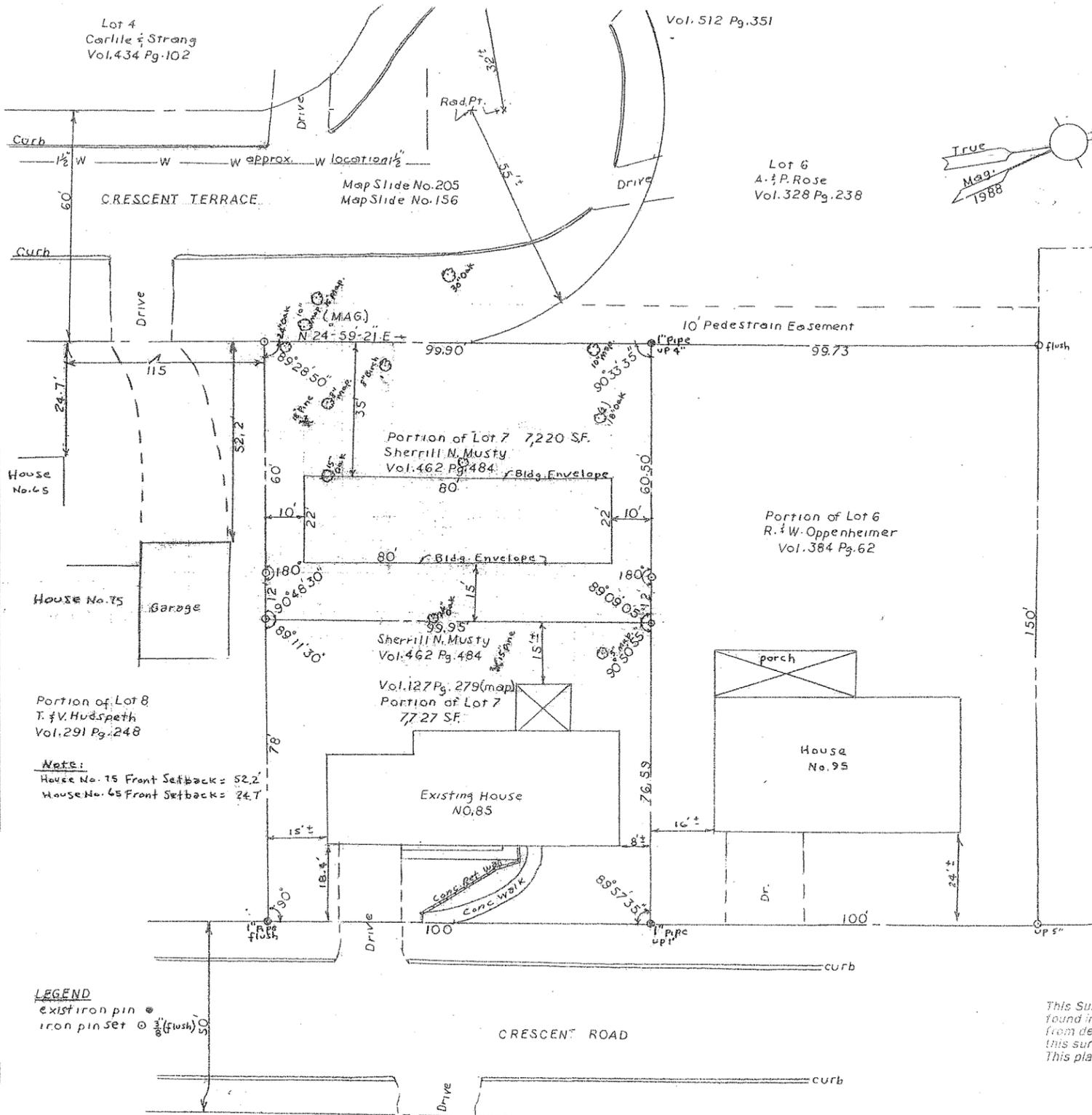
Dated at Burlington, VT, this 17th day of December, 2008.

Respectfully Submitted,



Rephotographs of New England, Winooski, VT hereby certifies that this map was reproduced by the fixed line photographic process.

437-6
C. J. Fiegel

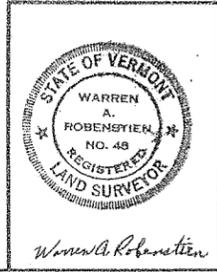


LEGEND
exist iron pin •
iron pin set ○ (flush)

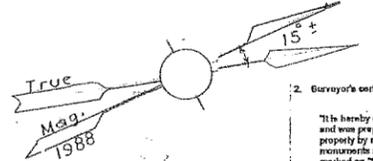
CITY OR Town Clerk's Office
Received For The Record
Date _____ AD
AT _____ o'clock min _____ m
In map cabinet slide _____
Attest _____
Town Clerk

6. Certificate of the City Engineer, as follows:
"I, STEVEN GOODKIND, city engineer, do hereby certify that the subject plat has been examined by me and found to comply with the engineering requirements set forth in the regulations governing plats of subdivided land adopted by the city council, with the following exceptions:
[Signature]
City Engineer

APPROVED BY RESOLUTION OF THE CITY OF BURLINGTON DEVELOPMENT REVIEW BOARD, VERMONT, ON THE DAY OF SEPTEMBER, 2008, SUBJECT TO ALL REQUIREMENTS AND CONDITIONS OF CHAPTER 28 ENTITLED SUBDIVISION REGULATIONS OF THE BURLINGTON, VERMONT, CODE OF ORDINANCES, SIGNED THIS 25 DAY OF SEPTEMBER, 2008, BY [Signature]
Witness Chairman



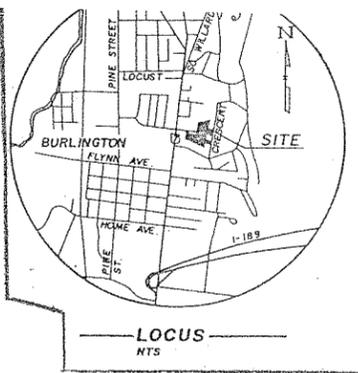
PLAN SHOWING SUBDIVISION OF PORTION OF LOT NO. 7 SHERRILL N. MUSTY PROPERTY NO. 85 CRESCENT ROAD BURLINGTON, VERMONT		
Rev. 3-28-09	SCALE: 1" = 20'	DRAWN BY W.A.R.
DATE: Sept 25, 2008		APPROVED BY W.A.R.
WARREN A. ROBESTIEN, REG. VT & NH L.S. P.O. BOX 171 WINOOSKI, VT 05404 (802) 878-2359		
DRAWING NUMBER		



2. Surveyor's certification as follows:
"It is hereby certified that this plat is true and correct and was prepared from an actual survey of the property by me or under my supervision; that all measurements shown herein actually called or are marked as "true" and their location, size, and materials are correctly shown."
By: [Signature]
Deal

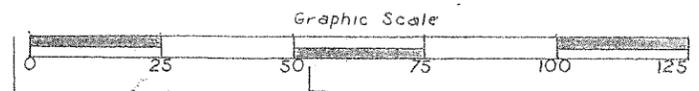
3. Subdivider's certification as follows:
State of Vermont, County of Chittenden, City of Burlington
"The owner of the land shown on this plat and whose name is subscribed herein, in person or through a duly authorized agent, certifies that this plat was made from an actual survey, and that all areas or other measurements hereon are true and have been paid."

Certification of the City Marshal as follows:
I, [Signature], do hereby certify that the subject plat has been examined by me and found to comply with the fire prevention requirements set forth in the chapter governing plats of subdivided land adopted by the city council with the following exceptions:
[Signature]
City Fire Marshal



1. Engineer's certification as follows:
"It is hereby certified that this plat fully complies with all engineering requirements set forth in the subdivision regulations of the City of Burlington and all other engineering requirements of Burlington, Vermont."

By: _____ Registered _____
Seal _____



NOTE: LOT COVERAGE WITH EXISTING HOUSE, DRIVE & WALK = 40% ±

This Survey is based on physical evidence found in the field and information abstracted from deeds and other pertinent records and this survey is consistent with that evidence. This plat conforms to 27 V.S.A. section 1403.

Surveyors Report
Sherrill N. Musty subdivision based on actual survey and Hoag Survey dated April 1944 and recorded in Vol. 127 Pg. 279.