

December 11, 2022

Scott Gustin
Principal Planner & Asst. Administrative Officer
Dept. of Permitting & Inspections
645 Pine Street
Burlington, VT 05401

Re: ZAP-22-4; Appeal of Determination ZP-22-503 as to Separate Lot

Dear Mr. Gustin:

In my appeal of the above referenced permit application, I have requested that the original denial issued on September 21, 2022, be reinstated because the Zoning Administrator did not have jurisdiction to issue a revised decision on November 2, 2022, since the original decision was under appeal. However, in the event that the Development Review Board wishes to substantively consider the initial appeal that Mrs. Boix-Vives filed, I also submit the information below along with attachments to support a final determination that there are no longer two lots.

Introduction

As the Permitting and Inspections Department has communicated in its original and revised decisions, there were in fact two original lots when this neighborhood was created. I live next door to the lot known as Lot 89 which fronts on Chestnut Terrace at 32 Chestnut Terrace. After reviewing title for both Mrs. Boix-Vives' lot and my own, it appears that the lots were merged by actions of the previous owner, her late husband, the City of Burlington, and the State of Vermont during a boundary line adjustment in 2002. In addition, Mr. Boix-Vives took repeated actions after the 2002 boundary line adjustment, showing he understood that there was only one lot. There is now only one lot of .72 acres known as 41 South Street.

Relevant Facts

1. In 1975, Mr. Boix Vives got the property in one deed that described 4 separate parcels of land. Some of these parcels were quite small, but one was called Lot 89 from the original lot layout for this neighborhood. It fronted on Chestnut Terrace. Two of the "parcels" Mr. Boix-Vives acquired were quite small and were likely non-conforming lots and merged by operation of law because they could never have been conveyed by themselves under Burlington Zoning Rules. The fourth lot was identified in the deed as Lot 86 and is where the house with an address of 41 South Street sits today. **Attachment 1**, Warranty Deed from McDonald to Boix-Vives dated April 4, 1975, recorded at Book 227, Page 702 of the Burlington Land Records.
2. In 2002, Mr. Boix Vives and Linda Gibson (my predecessor in title) did a boundary line adjustment. As part of that adjustment, they obtained a Zoning Permit which requested a boundary line adjustment between 41 South Street and 32 Chestnut Terrace which was approved as Zoning Permit #02-448 and issued on April 19, 2002. There is no boundary line between 32

Chestnut Terrace and 41 South Street because the lots do not abut, unless there is only one Boix-Vives lot. The Zoning Administrator at the time would have noticed this immediately and would have denied the permit, unless there was 1) already a merger of all of Boix-Vives property into one lot, or 2) this boundary line adjustment was also merging the two 4 parcels, two conforming and two non-conforming, into one lot known as 41 South Street. Indeed, the map submitted and recorded with the boundary line adjustment shows one lot for 41 South Street, encompassing all of Mr. Boix-Vives land. In addition, using the same map that was used for the Zoning Permit, Mr. Boix-Vives and Ms. Gibson also obtained a state subdivision permit. The State permit conditions also recognize only one lot encompassing all of Mr. Boix-Vives' land, with only one residence is permitted on the lot. **See Attachment 2**, Condition 6, Subdivision Permit #EC-4-2482, dated July 8, 2002, and recorded at Book 749, Page 677 in the Burlington City Land Records September 5, 2002. A copy of this permit was also forwarded to the then Burlington Planning Commission.

3. In 2006, Mr. Boix Vives did another boundary line adjustment with his South Street neighbors David and Pietra Sylvester and recorded another survey showing all his property as one lot, consistent with the subdivision permit and the previous zoning permit.

4. In 2017, Mr. Boix Vives conveyed all his lands to himself and Mrs. Boix Vives as joint owners. In that deed, all the property that is part of 41 South Street (there is no mention of 89 Chestnut Terrace or Lot 89) was conveyed which includes everything in the maps described above as one lot. This is the deed by which Mrs. Boix-Vives obtained ownership of the property. **Attachment 3**, Warranty Deed from Laurent Boix-Vives to Laurent and Janine Boix-Vives, dated October 2, 2017, recorded at Book 1365, Page 88 of the Burlington Land Records.

Analysis

The November 2, 2022, Revised Determination of the Zoning Administrator references “a couple of surveys for boundary adjustments” but then dismisses them as being merely incorrect. The decision fails to acknowledge what should have been in the City’s own files and is of record, which are an approved boundary line adjustment with merged lots and a state permit which clearly shows the same. If the City had not approved the merger of the lots, then the 2002 zoning permit application should have been rejected, since Lot 86 (41 South Street) shares no boundary with 32 Chestnut Terrace. Moreover, subsequent actions by Mr. Boix-Vives himself were consistent with the understanding that he owned one lot, including the Sylvester boundary line adjustment and his conveyance of the property to himself and Mrs. Boix-Vives, now the current owner.

Finally, while the City’s tax map is a piece of evidence that is “conflicting,” as the City’s original zoning determination mentions, because it shows two separate lots owned by the Boix-Vives. Of course, it is black letter law in Vermont that municipal tax maps do not determine property rights or boundaries. After review, it appears that the City’s tax map calls the lot “89 Chestnut Terrace” as its address because it is merely a mistaken reference to the original Lot number and not an actual address. The homes on Chestnut Terrace (there are only 4, including mine) are numbered for mailing/911 purposes much lower than the original lot numbers. My home at 32 Chestnut Terrace is the highest number on the street. My original lot number was

Lot 90. There is no relationship between the lot numbers and the physical address. In other words, it is not, as the Zoning Determination suggests, that the surveys and permits are in error; it is that the tax map contains the error. There never has been an address known as 89 Chestnut Terrace.

Conclusion

In conclusion, in the event the DRB decides to consider not only the appeal before it of the improper issuance of a reconsideration determination while an appeal was pending, but also considers the substantive question of whether or not there is one lot or two, I ask that this submission be considered in any deliberation. Based on the information I have shared in this correspondence, I support the Zoning Administrator's *original* determination that there is not a separate lot known as Lot 89 fronting on Chestnut Terrace. There is only one lot owned by Mrs. Boix-Vives, known as 41 South Street.

Sincerely,


Arline P. Duffy