

November 17, 2022

To the Development Review Board:

I am appealing the decision for Zoning Permit Application ZP #: 22-503. My filing fee of \$250 was paid on-line. The application #22-503 originally received an Adverse Determination that 89 Chestnut Terrace is a separate lot from 41 South Street, which was issued on September 16, 2022. The Applicant timely appealed the decision to the DRB on September 21, 2022. I am an abutter to the proposed separate lot at 89 Chestnut Terrace and received notice of the appeal and a scheduled hearing date of November 1, 2022. I then received a second notice with a new date of November 15 for the appeal. I spoke with staff in the Zoning Office to indicate that I would be submitting materials for the hearing. I then learned that the appeal had been withdrawn because, on November 2, 2022, the Zoning Administrator reversed their decision and issued a new decision. I appeal on the following grounds:

1. The Zoning Administrator lacked jurisdiction to issue a new decision on November 2, 2022 because there was a pending appeal before the Development Review Board. Jurisdiction of the matter had already been transferred to the DRB.
 - a. The exclusive remedy for a decision of the Zoning Administrator is to file an appeal. 24 V.S.A. § 4465; 4470.
 - b. When issuing a decision on a Zoning Permit, a town or city is acting as a quasi-judicial entity. *In re Freimour & Menard Conditional Use Permit*, No. 59411, 2012 WL 8898500, at *5 (Vt.Super. June 06, 2012). *See also, Chioffi v. Winooski Zoning Bd.*, 151 Vt. 9, 13 (1989).
 - c. “[W]hen a notice of appeal from a decision of an appropriate municipal panel is properly filed with the Environmental Division under the provisions in 24 V.S.A., Chapter 116 and V.R.E.C.P. 5, the municipal panel is divested of its jurisdiction over the matter on appeal and jurisdiction is conferred to the Environmental Division. *In re Freimour & Menard Conditional Use Permit*, No. 59411, 2012 WL 8898500, at *5 (Vt.Super. June 06, 2012).
2. The Applicant, through her attorney, Zachary Berger, was mailed a Z card on September 6, 2022 (according to Zoning and Planning staff) and failed to properly post the property during the pendency of the Zoning Permit application in violation of Section 3.2.4(b) of Burlington’s Zoning Ordinance. To this day, no notice has been posted at the property. No neighbor had any notice of the request for a determination until those immediate neighbors received the required DRB Appeal Notice by mail.

I respectfully request that the Development Review Board remand the matter to the Zoning Administrator with direction to reinstate its original decision dated September 16. I believe this relief is the only relief appropriate given the circumstances. The action of the Zoning Administrator on November 2 violated Vermont law and my due process and statutory rights to

participate in the original appeal. Applicant has also failed to adhere to the procedural rules requiring notice at the property. Applicant should be directed to properly post the property immediately so that other neighbors are aware of this proceeding and can exercise their rights if they so choose, in the event that Applicant again exercises her right to appeal the Adverse Determination.