

## Department of Permitting & Inspections

Zoning Division  
645 Pine Street  
Burlington, VT 05401  
Telephone: (802) 865-7188  
(802) 865-7195 (FAX)

*William Ward, Director  
Scott Gustin, AICP, CFM, Principal Planner  
Mary O'Neil, AICP, Principal Planner  
Ryan Morrison, Associate Planner  
Joseph Cava, Permit Technician  
Ted Miles, Code Compliance Officer  
vacant, Permitting & Inspections Administrator*



**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** December 20, 2022  
**RE:** ZAP-22-8; 89 Chestnut Terrace

---

**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: 6S

Owner/Appellant: Janine Boix-Vives / Arline Duffy

**Request:** Appeal of zoning determination ZP-22-503 recognizing 89 Chestnut Terrace as a separate lot from 41 South Street.

### **Overview:**

The subject property is located within the Residential – Low Density zone at the southeastern corner of the city. It is among a suburban style residential neighborhood originally subdivided in the 1950's. Detached single family homes predominate. The subject property includes two addresses. 41 South Street contains the owner's residence. 89 Chestnut Terrace is contiguous but vacant.

The property owner sought a determination recognizing the subject property as two distinct lots. Initially, it appeared that the property was a single lot; however, in the end, an affirmative determination was issued recognizing the property as two separate lots. That determination has been appealed by a neighbor, Arline Duffy.

**Recommendation:** Uphold affirmative determination based on the following findings:

### **I. Findings:**

The applicant submitted the determination request to recognize two separate lots on September 6, 2022. A red Z-Card was prepared and mailed later that same day. The Z-Card is to be posted on the subject property to provide notice of the pending zoning application. The Z-Card was not posted in a timely manner but was posted belatedly as addressed further below.

The application was reviewed, and the zoning permit files and other city records were researched in considering the determination request. An adverse determination was issued September 16, 2022 based in large part on two boundary line adjustment permits in the zoning files depicting the property as one lot. Relatively minor boundary adjustments with neighboring properties were depicted and approved as part of the two boundary line adjustment zoning permits.

That initial adverse determination was appealed by the applicant and scheduled for public hearing with the Development Review Board on November 15, 2022. In researching the property history further in preparation for the appeal hearing, zoning staff found additional evidence in the land records and Sanborn maps supporting the presence of two separate lots. A revised determination was issued in the affirmative recognizing two separate lots, and the pending appeal was withdrawn.

The revised determination was issued November 2, 2022.

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington recognize that 89 Chestnut Terrace is a separate lot from that at 41 South Street. The City reviewed the following documents/evidence to form its determination:

- The City's zoning permit records
- The City's zoning and subdivision codes
- The City's tax parcel map
- The Sanborn maps
- The determination request for Zachary R. Berger

The foregoing items show conflicting evidence as to this matter. Specifically, the zoning permit records include a couple of surveys for boundary adjustments to the subject property. The surveys depict one lot, but the approved boundary adjustments did not include merger of 41 South Street and 89 Chestnut Terrace. The City's tax map depicts two separate lots (one for 89 Chestnut Terrace and another for 41 South Street). The property deeds and original subdivision plat for the south central section of Prospect Park depict two separate lots. The Sanborn maps depict two separate lots. There is nothing in the permit record indicating merger of the two lots. The noted boundary adjustment surveys appear to incorrectly depict two lots as one lot.

Based on review of these items, the Permitting & Inspections Department determines that 89 Chestnut Terrace and 41 South Street are two separate lots.

An appeal of this affirmative determination was filed by a neighboring property owner, Arline Duffy, on November 14, 2022. The appeal was made complete on November 17 – within the 15-day appeal period. The appeal asserts, among other things, that the Z-Card notice was never posted on the property. The applicant confirmed this lack of posting. A new Z-Card providing notice of the application and accompanying 15-day appeal period was issued and posted onsite as photographically confirmed by the applicant on November 17, 2022. The lack of notice was remedied. No additional appeals were filed during the restarted 15-day appeal period.

The appeal asserts that the Zoning Administrator lacks the authority to resolve an appeal outside of a public hearing with the Development Review Board. The original adverse determination was scheduled for hearing on appeal with the DRB. The appeal asserts that hearing should have occurred, and the DRB should have rendered a decision based on the original determination. This assertion is incorrect. If the Zoning Administrator issues a decision in error, and that decision is appealed to the DRB, the Zoning Administrator is able to correct that error with a revised decision

and render the appeal moot. Matters pending before the courts are routinely settled prior to trial. Something similar happened in this case. Additional evidence in support of the applicant's request to recognize the property as two separate lots was uncovered while preparing for appeal. A revised affirmative determination was issued, and the applicant withdrew the appeal. There was a glitch with posting of the property; however, that problem was resolved with a newly posted Z-Card and associated 15-day appeal period.

More substantively, the appeal asserts that the two separate lots were merged as part of the two boundary line adjustment permits for the property. Indeed, both boundary line adjustment permits include a boundary survey depicting the property as one lot (inclusive of 41 South Street and 89 Chestnut Terrace). Zoning permit 02-449, approved April 19, 2002 for 41 South Street, enabled 702.3 sf to be conveyed from 32 Chestnut Terrace to 41 South Street and vice versa. The boundary survey associated with this permit shows the land swap between these two properties and also depicts 41 South Street as one large lot. A subsequent zoning permit for 41 South Street, 06-367CA, approved December 1, 2005, enabled conveyance of 1,966 sf from 25 South Street to 41 South Street. The boundary survey depicts this conveyance and also shows 41 South Street as one large lot. As a matter of practice, boundary surveys are relied upon for the most accurate lot data. As noted above, the initial determination was adverse, based on the boundary survey with these two lot line adjustments. The determination was revised and made affirmative due to the following evidence in support of the property as two separate lots:

- The land records consistently refer to multiple lots.
- The original subdivision contained two separate lots.
- The Sanborn maps consistently depict two separate lots.
- The tax map depicts the property as two separate lots.
- No lot merger has ever specifically been requested or approved.

The boundary survey associated with the two lot line adjustments makes a general reference to deed research in the City of Burlington land records but lacks specifics. As noted above, the deed language in the land records consistently refers to multiple lots. Both lot line adjustment permits specify and approve conveyance of land between properties – not merger of multiple lots into one. All of the evidence except for this boundary survey points to separate lots.

This appeal can be argued both ways, with reasonable arguments on both sides. Insofar as ambiguity is decided in favor of the property owner, a revised determination recognizing two separate lots at 41 South Street and 89 Chestnut Terrace was issued based on the preponderance of the evidence.

## **II. Recommended Motion:**

Uphold the administrative determination.