

A PROFESSIONAL CORPORATION

76 St. Paul Street
P.O. Box 369
Burlington, Vermont 05402-0369

Telephone 802.658.0220
Facsimile 802.658-1456
www.gravelshea.com

Zachary R. Berger
Associate
zberger@gravelshea.com

December 13, 2022

Permitting & Inspections
645A Pine Street
P.O. Box 849
Burlington, VT 05402-0849

Re: ZAP-22-503/ZAP-22-8

Dear Zoning Office/Development Review Board,

On behalf of our client, Jeannine Boix-Vives, we write this letter in support of the Affirmative Zoning Determination issued in ZAP-22-503 on November 2, 2022 (the "Affirmative Determination")

Executive Summary

Our client acquired what is now 89 Chestnut Terrace and 41 South Street (collectively, the "Lots") on April 4, 1975. At that time, 89 Chestnut Terrace and 41 South Street were each separate, adjacent lots. Since 1975, these two lots have remained conforming, and there has been no municipal action to explicitly merge the lots. The City recognizes these parcels as separate lots on the grand list and issues separate tax bills for each parcel.

As the Department of Permitting & Inspections (the "Department") noted in its Affirmative Determination, the deed history and original subdivision plat depict two separate lots. The two boundary line surveys referenced in the original Adverse Zoning Deamination incorrectly depict the two Lots as one. Nothing in the permit record indicates the merger of the Lots, and Ms. Boix-Vives has taken no action to merge the Lots.

We support the Department's conclusion that 89 Chestnut Terrace and 41 South Street are two separate lots. The deed history, initial subdivision plats, tax maps, and the lack of any municipal action to merge the Lots demonstrate the Department is correct in its analysis and conclusion.

Therefore, we respectfully request that the Development Review Board uphold the Affirmative Zoning Determination concluding that 89 Chestnut Terrace and 41 South Street are two separate lots.

Background

Our client (Jeannine Boix-Vives) is interested in selling 89 Chestnut Terrace. She is hoping to convey 89 Chestnut Terrace and retain 41 South Street. We had requested a formal determination from the Department that the Lots are indeed two separate lots.

On September 16, 2022 the Department issued an Adverse Zoning Determination (the “Initial Determination”). We filed an appeal (ZAP-22-4) through the online permitting system on September 26, 2022 (the “Initial Appeal”). Shortly thereafter, the Department reconsidered the matter and issued the Affirmative Determination, which Ms. Duffy has now appealed (the “Current Appeal”). We revoked our Initial Appeal upon the issuance of the Affirmative Determination.

Discussion

The Department’s analysis and conclusion in the Affirmative Determination is overwhelming supported by the deed history, zoning record, and tax maps. In its Initial Determination, the Department relied on the two boundary line adjustment surveys. The Department’s analysis in the Initial Determination was understandable but incorrect. The Department recognized its misstep and rectified the situation by reconsidering its determination and issuing the Affirmative Determination.

In its Initial Determination, the Department recognized that the record contains conflicting information — namely the City’s tax parcel map and two boundary line adjustment surveys. The Department determined that the City’s tax parcel map does list the Lots as two separate lots. Ms. Boix-Vives receives two separate tax bills for the Lots. The Department also recognized that the surveys attached to two previous boundary line adjustments (both dealing with the adjustment of external lot lines as opposed to the boundary line between the Lots) depicted the Lots as one lot. The Department expressed and relied upon its general policy to defer to a survey when lot information differs from what the City’s tax parcel map depicts. While this is an understandable general policy, it does not take into account the full record and deed information — which demonstrate that the Lots are indeed two separate lots.

The Department’s general policy to defer to a survey was problematic in this instance because the two boundary line adjustment surveys incorrectly omit an internal lot line. As we described in our initial application, in our Initial Appeal, and as recognized by the Department in its Affirmative Determination, the deed history and original subdivision plat demonstrate that 89 Chestnut Terrace and 41 South Street are separate lots. The two boundary line adjustment surveys incorrectly omit the internal lot line. Both surveys were created to depict external boundary line adjustments (one boundary line adjustment on the northern border of 89 Chestnut Terrace and one

boundary line adjustment on the northern border of 41 South Street). These boundary line adjustments involved minor adjustments to external lot boundaries, had nothing to do with merging the Lots, and the internal lot boundary between 41 South Street and 89 Chestnut Terrace was irrelevant for the purposes of these two boundary adjustments.

As we explained in our Initial Appeal, the lack of an internal lot boundary on these external boundary line adjustment surveys should not be the basis for the merger of the Lots. The City has identified the Lots as different parcels for several years, the boundary line adjustment surveys clearly demonstrate the intent to adjust the external lot boundary, and no record of any municipal action attempting to merge the Lots exists. This is particularly true because Ms. Boix-Vives never received notice that the Lots were merged and never had an opportunity to appeal such a decision.

The Department recognized its initial reliance upon the two boundary line adjustment surveys was mistaken given the circumstances. Upon reconsideration, the Department issued the Affirmative Determination, which is supported by all of the information discussed here.

December 11, 2022 Letter

We also reviewed the letter to Scott Gustin from Arline Duffy dated December 11, 2022 in connection with this matter (the “December 11 Letter”). Arline Duffy owns property adjacent to the 89 Chestnut Street parcel. The December 11 Letter makes a number of arguments that the 41 South Street and 89 Chestnut Terrace were merged.

The December 11 Letter incorrectly asserts that the two boundary line adjustment surveys merged the Lots. As we pointed out in our Initial Appeal, both the 2002 and the 2005 boundary line adjustment surveys clearly label the boundary line subject to the adjustment, which, in both cases, is the external lot boundary. The State permit involved in the 2002 boundary line adjustment also refers to the “minor boundary line adjustment” as an adjustment to the external boundary line depicted on the survey. Subdivision Permit #EC-4-2482, dated July 8, 2002, and recorded at Book 749, Page 677 in the Burlington City Land Records. The boundary line adjustment materials do not contain any discussion of or even mention the merger of 41 South Street and 89 Chestnut Terrace. The failure of the surveyor to include the internal lot boundary should not be the basis of any lot merger.

The December 11 Letter also refers to the 2017 Quitclaim Deed (the “2017 Deed”) from Mr. Boix-Vives to himself and Ms. Boix-Vives as joint owners. The 2017 Deed references all four parcels as originally conveyed to Mr. Boix-Vives, the two boundary-line adjustment quitclaim deeds, and includes no language whatsoever demonstrating an intent to merge the parcels. The deed simply demonstrates an intent to create a joint ownership interest with his wife in the Lots.

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The deed history and original subdivision plat clearly depict two separate lots, no municipal action has been taken to erase the internal lot line and merge the lots. Even if the boundary line adjustments or 2017 Deed create ambiguity, that ambiguity must be “resolved in favor of the landowner.” *In re Application of Lathrop Ltd. P'ship I*, 2015 VT 49, ¶ 29, 199 Vt. 19, 35, 121 A.3d 630, 642 (2015) (internal quotation omitted).

Finally, both procedural concerns raised in the December 11 Letter are moot. Nothing in the Burlington Comprehensive Development Ordinance prohibits the issuance of a redetermination. In fact, we had already appealed the Initial Decision and Ms. Duffy has asserted that she intended to participate in the Initial Appeal. Any reinstatement of that decision would create an identical outcome — an appeal before the Development Review Board. Notice was posted, the appeal period was reopened, and the appeal period has run its course. All interested parties have had an opportunity to raise their concerns.¹

For all of the reasons stated above, we respectfully request that the Development Review Board uphold the Department’s Affirmative Zoning Determination concluding that 89 Chestnut Terrace and 41 South Street are separate lots.

Thank you for taking the time to review.

Very truly yours,

GRAVEL & SHEA PC



Zachary R. Berger

ZRB:kad

¹ While the failure to timely post notice was not intentional, it is worth noting that the administrative action at hand is a Determination of Non-Applicability — which does not contain a notice requirement. *See Burlington Comprehensive Development Ordinance* § 3.1.2(d).