

January 5, 2016

Burlington Development Review Board
149 Church Street
Burlington, Vermont 05401

Edward G. Adrian (Of Counsel)
Steven R. Ducham
Amy E. Escott
Brian P. Monaghan
Claudine C. Safar*

*Also licensed in New Hampshire
and Maine

Re: Appeal of ZP16-0511CA, 154 Park Street

Dear Members of the Board:

We represent Maggie Standley (Standley) in her appeal of the administratively approved zoning permit # ZP16-0511CA to establish a family daycare for two children in an existing single-family residence. Standley has appealed the issuance of this permit on the basis that the daycare use on the premises does not meet the definition of a Family Day Care Home and therefore cannot be approved administratively. Standley is requesting a reversal of the administrative decision and review of the day care use as a home occupation pursuant to Article 5.4.6(b) of the Burlington Comprehensive Development Ordinance (CDO).

I. Background:

The applicant, Amy Pickering (Pickering), has been operating a day care business at her single family home located at 154 Park Street from the fall of 2013 to the present. Standley's yard is directly adjacent to Pickering's yard and is separated by a fence. Based on a site plan provided for a previous zoning application, Pickering's yard is approximately 800 square feet. See *Site Plan attached as Exhibit 1*. The neighborhood is densely situated with small yards in very close proximity. By the summer of 2014, the persistent noise and disruption caused by childcare activities in the adjacent yard prompted Standley to approach Pickering to discuss possible solutions to the noise issues and request a schedule of outside playtime. Around this time, Pickering provided Standley with a hand written rough schedule showing use ranging from "Toddlers" to "Lots of Toddlers" and on Fridays, things are "Quieter until after school." See *Schedule attached as Exhibit 2*.

Starting in the spring of 2015, as the weather improved and the children were outside playing again, the noise from the childcare activities began to profoundly affect Standley's quiet use and enjoyment of her home and her ability to prepare for the various summer programs and camps she runs as part of her business. During this time and into the fall of 2015, Standley routinely witnessed between four and ten toddlers and children in Ms. Pickering's yard. See *Activity Log attached as Exhibit 3 at Paragraphs 9-14, 18-21, 27, 30, 32, 33-36, and 37*. In addition to yelling, screaming, shrieking and crying (as toddlers and children do when they play) the children were also kicking or throwing balls repeatedly

against the shared fence and often the balls would come over the fence into Ms. Standley's yard. Kids and/or parents would come onto Ms. Standley's property to retrieve them.

Throughout this time, Standley attempted to resolve the noise and disruption issues via direct communications with Ms. Pickering, but to no avail. When direct communications failed, Standley contacted the Burlington Police Department (BPD) in June 2015 to enforce the City noise ordinance. The parties attempted mediation through the BPD, but this too failed when Pickering backed out of the negotiations.

With the noise from the many toddlers and children continuing unabated, Standley contacted Mary O'Neil (O'Neil), Senior Planner, at Burlington Planning and Zoning (P&Z). During July and August of 2015, Code Enforcement began an investigation of the day care use at 154 Park Street. Code Enforcement ultimately issued a Notice of Violation (NOV) on October 13, 2015 for a "[c]hange of use from single family home to single family home with a home occupation (small day care) use, without zoning approval." See *NOV attached as Exhibit 4*. On October 22, 2015, Pickering applied for a zoning permit for her daycare. See *Zoning Permit Application attached as Exhibit 5*. On her application Pickering stated her daycare serves two children and it is not "state licensed/legal." On October 22, 2015, O'Neil administratively approved and issued a zoning permit for a Family Day Care Home.

II. Legal Arguments

a. Unregistered day care not a permitted use.

The first issue is whether Pickering's unregistered day care can be considered by right to constitute a permitted accessory use to a single detached dwelling subject to administrative approval.

Article 13 of the CDO defines a Family Day Care Home as "**[a] state-registered or licensed day care facility** serving up to six (6) pre-school plus four (4) school-aged children. A family day care shall be considered by right to constitute a permitted accessory use to single detached dwellings." [*emphasis added*]. This definition is derived from 24 V.S.A. § 4412(5) that also defines a "family child care home or facility" as a home or facility where the owner or operator is licensed or registered by the State and states such licensed or registered family child care home shall be considered by right to constitute a permitted accessory use. See 24 V.S.A. § 4412(5) *attached as Exhibit 6*.

Zoning ordinances are construed according to the general rules of statutory construction. See *Blundon v. Town of Stamford*, 154 Vt. 227, 229, 576 A.2d 437, 439 (1990). Therefore, if the meaning of the ordinance is plain, it will be enforced according to its terms, without need to resort to subordinate rules of construction. See *In re Vermont Nat'l Bank*, 157 Vt. 306, 312, 597 A.2d 317, 320 (1991). Furthermore, in interpreting regulations, the Vermont Supreme Court has stated its overall goal is to discern the intent of the drafters. See *Conservation Law Found. v. Burke*, 162 Vt. 115, 121, 645 A.2d 495, 499 (1993). When possible, the Court accomplishes this by reference to the plain meaning of the regulatory language. See *Slocum v. Dep't of Soc. Welfare*, 154 Vt. 474, 478, 580 A.2d 951, 954 (1990).

The definition of Family Day Care Home in the CDO and 24 V.S.A. § 4412(5) specifically and unequivocally includes the requirement that a family day care be state registered or licensed in order to be considered a permitted use by right. This requirement is unambiguous and plain, and it is clear the drafters of both the CDO and the statute intended this category of day care to have some regulatory oversight by the State. It is undisputed that Ms. Pickering's family day care home is not licensed or registered. Therefore, it does not meet the definition of Family Day Care Home in the CDO or the statutory definition and cannot be considered by right to constitute a permitted use.

Article 1.1.7 of the CDO states:

Except as otherwise provided in this ordinance, no person may use or occupy any land or authorize or permit the use or occupancy of land or buildings under his or her control except in accordance with the applicable provisions of this ordinance.

Article 3.2.9(a) of the CDO states:

A zoning permit may be granted and released by the administrative officer only in conformance with this ordinance, and subject to all applicable submission and review requirements described by this ordinance.

Because it does not conform to the clear and unambiguous definition of Family Day Care Home, Pickering's daycare is not in conformance with the applicable provisions of the CDO. Because the daycare is not in conformance with the applicable provisions of the CDO, the zoning permit was issued by the administrative officer contrary to the requirements of Article 3.2.9(a) above, and should be reversed.

In support of her decision in the Memorandum of Findings submitted to the DRB, O'Neil states that P&Z staff spoke to a representative from DCF and confirmed that a day care serving children from two or fewer families does not require State registration. O'Neil concluded that the City "cannot require an applicant to secure licensure that cannot be obtained, and to a greater standard than required by the State of Vermont." While it may be true that DCF would not *require* registration of a day care serving children from two or fewer families, Jen Benedict of Child Care Licensing for DCF, confirmed via email that any family day care, no matter how small, can submit to State registration. See *email from Jen Benedict attached as Exhibit 7*. Therefore, O'Neil's conclusion that Pickering cannot obtain state registration, which is the basis for her decision to administratively approve Pickering's day care, is inaccurate.

Furthermore, O'Neil's finding relative to the number of children served by Pickering's day care is insufficient and inaccurate. First, O'Neil does not provide any basis for her finding regarding the number of children, nor does she state exactly how many children are being served. Instead, the memorandum contains an unsupported and vague conclusion on this issue. In making this finding, O'Neil disregarded the schedule provided to Code Enforcement, in Pickering's own handwriting, indicating she watches "Lots of Toddlers" (See Exhibit 1). O'Neil also disregarded numerous emails from Standley stating how many children had been seen and heard in Pickering's yard as recently as a couple of days before the permit was issued. See *Exhibit 3 at Paragraphs 9-14, 18-21, 27, 30, 32, 33-36, and 37*. Contrary to abundant evidence provided to O'Neil, O'Neil found that the number of children served was below the threshold that would require registration.

In sum, State registration is an option available to Pickering despite the number of children she is serving. In fact, Kelly Lyford from DCF confirmed for us that Pickering applied for State registration just two days after the instant appeal was filed. The City can and must require Pickering to register her day care with the state in order to grant administrative approval for her Family Day Care Home as defined in the CDO. As stated above, in the absence of State registration, the administrative approval of Pickering's day care was issued in error and should be reversed.

b. Review of Unregistered Family Day Care Home as a Home Occupation.

The next issue is whether Pickering's day care should be reviewed as a Home Occupation pursuant to Article 5.4.6(b) of the CDO since administrative approval as a permitted use is unavailable.

As discussed above, in the absence of State registration, Pickering's day care does not meet the definition of Family Day Care Home and cannot be considered a permitted use by right. In order for Pickering to obtain a zoning permit for the use of her single-family home as an unregistered day care business, we submit the most appropriate review would be as a Home Occupation in accordance with the provisions of Article 5.4.6(b) of the CDO. In her memorandum to the DRB, O'Neil states "[d]aycares are not home occupations." However, the NOV issued by Code Enforcement plainly states the violation was a "[c]hange of use from single family to single family with a **home occupation** (small day care) use, without zoning approval." [emphasis added]. See *Exhibit 4*. The City has already admitted that the use is a home occupation. Nothing in the definition of Home Occupation precludes day cares. Home Occupation is defined as "an accessory use of a dwelling unit for employment involving the provision of services or the fabrication of goods." Pickering's use of her home as a daycare is exactly an accessory use of her dwelling unit for employment involving the provision of services. Furthermore, Article 5.4.6(c) lists specific exemptions to home occupations that include "kennels, veterinary clinics, or similar establishments." Day cares are not listed among the exclusions.

Case law further supports our argument that a review of Pickering's day care as a home occupation is appropriate and allowable. The Vermont Supreme Court held that home occupations are easily harmonized with the statute requiring treatment of a state registered or licensed day care facility as a permitted single-family residential use if it serves six or fewer children and it does not preclude consideration of such use as a home occupation. *In re Herrick*, 170 Vt. 549, 550, 742 A.2d 752, 754 (1999). In the instant matter, it is the CDO, as derived from the statutes, that is requiring treatment of a state registered day care as a permitted use, but the conclusion is analogous and still applies: the definition of Family Day Care Home does not preclude Pickering's operation from being considered a home occupation as O'Neil asserts.

III. Conclusion.

Based on the above legal arguments, it is clear Pickering's use of her home as a daycare is not a permitted use by right and review of the day care as a home occupation is appropriate. Accordingly, Standley respectfully requests that the DRB reverse the City's administrative approval of Pickering's day care and order a review of the day care business as a home occupation in accordance with Article 5.4.6.

Thank you for your consideration and attention to this matter.

Sincerely,

Monaghan Safar Ducham PLLC



Amy E. Escott, Esq.

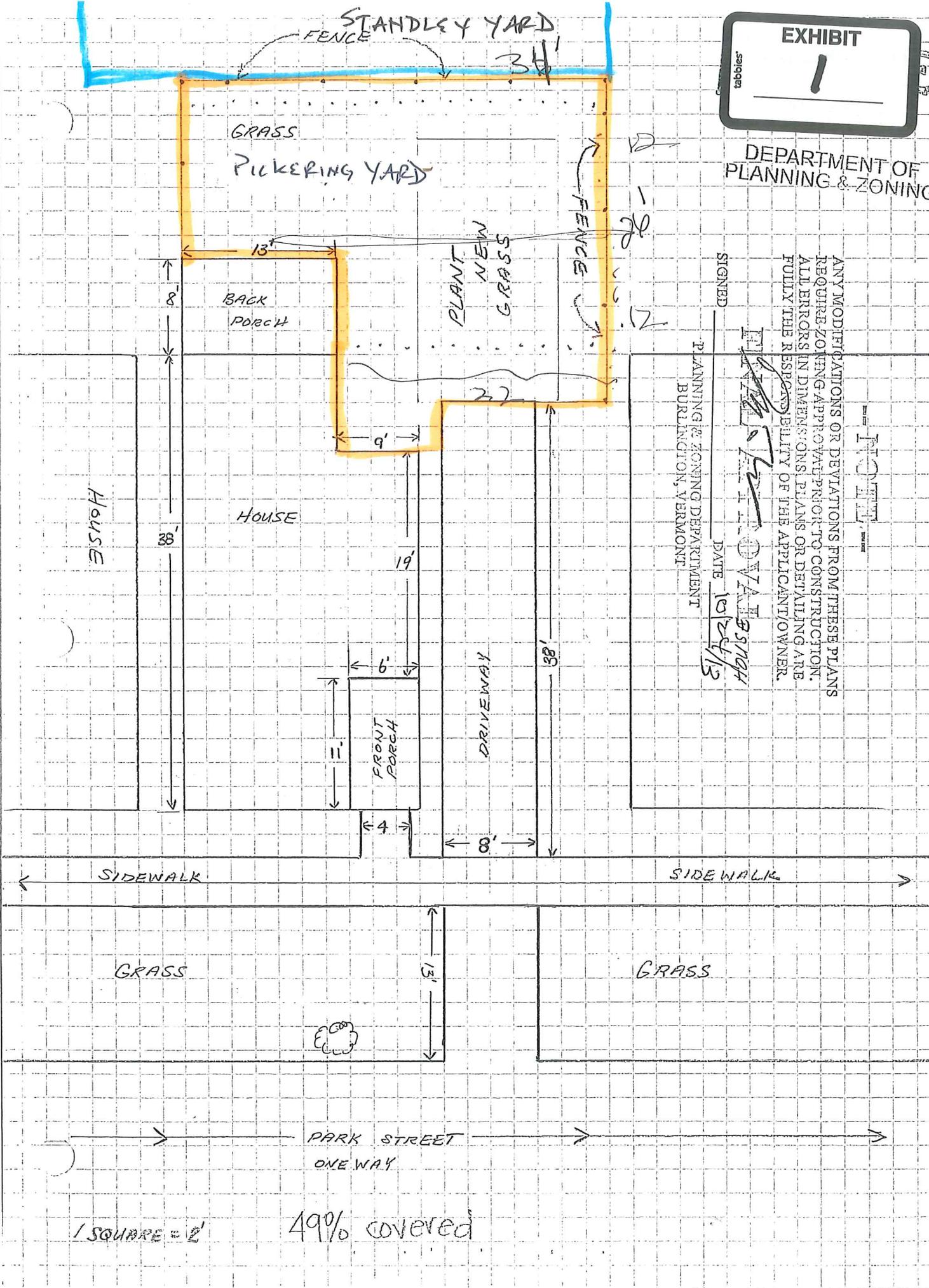
Cc: Client
Mary O'Neil, Burlington Planning and Zoning

DEPARTMENT OF
PLANNING & ZONING

ANY MODIFICATIONS OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.

SIGNED: *[Signature]*
DATE: 10/24/13

PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT



1 SQUARE = 2'

49% covered



7:45-5:30 Amy Ticker ^{MC} NOTES

~~Mondays - Toddlers~~

~~Tuesdays - Toddlers~~

Wednesdays - Lots of toddlers - lots of noise

Thursdays - "Quieter" after 1

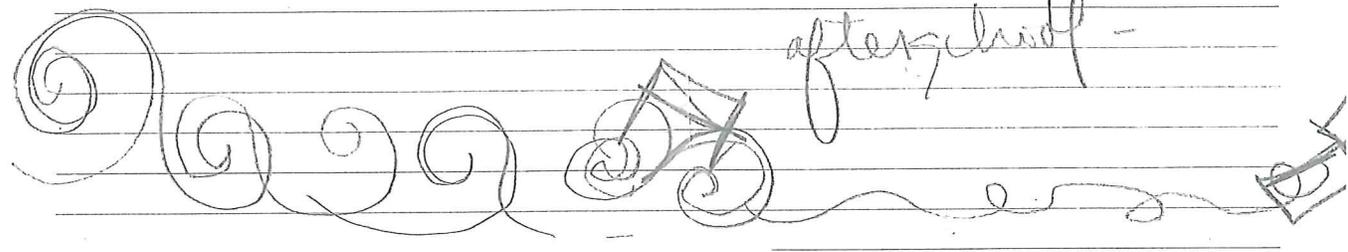
Fridays - "Quieter" until after school (3:00)

} Work (M-W) } After school needs

Moonbeamsmommy@gmail.com

every other tr

after school -





Timeline of Childcare/Events at 154 Park St, Burlington VT

1. **Sept 30, 2013:** Amy Pickering purchases house from CHT. I welcome her w/ flowers, a card w/ my number that I bring over to introduce myself on her porch. (I live at 13 Myrtle St and purchased my home in May of 2006) Previous owner was murdered so want to be sure she has my number etc...as whole neighborhood was shook up and in disbelief)
 - **While I am there a parent (Jessica Nordhaus picking up Lydia) is picking up her daughter in early eve. Amy continues to watch many kids from multiple families.** Some of who have also attended programming at Wingspan Studio. Kiki, Robin, (siblings), Djena, Deba, Fritznel (siblings), Kernen and his lil toddler sister (siblings). Others she watches include those who haven't attended programming at Wingspan, Lydia for example and Richard and his brother, and various toddlers I don't know.
2. **Oct, 2013 - ongoing:** Removal of existing garage, many work projects begin on house including pulling up all landscaping in back yard, new grass planted, swingset custom built, shed constructed below upstairs porch, windows changed, lead remediated etc...Childcare going on with mostly hanging out on the Front Porch when outside.
3. **Dec 2013:** Stop by to invite Amy over for New Years Eve. Another woman is there and say hi to her kiddos, they are going to stay in. First time I enter the house since Kathleen's death. (Previous owner-Kathleen Smith)
4. **Spring/Summer 2014:** Much Childcare takes place, including toddlers and afterschool care. I realize she does this as a business on a regular, almost daily basis. Parents pick up their kids between 5-6 pm, park in driveway, blocking sidewalk or on the corner, and talk with Amy in backyard as kids play, scream, shriek etc. Becoming difficult to enjoy my home and block out the noise when outside and sometimes when inside too.
5. **August 2014:** I send neighborly FB message, 8.25.14 to talk about the noise generated by busy daycare business. (see message attached)
*"Hi Amy-
Do you have any time to chat tonight re our shared "air" space? wanna come by for glass of wine? i'm free after 7:30 pmish-or i can swing by chez toi-ThksMaggie
802.233.7676*

I head over there and ask if we could come up with a schedule for outdoor times of her usage and my usage since our yards are on top of each other and the noise is really disturbing. She tells me there's nothing she can do about the noise and that she watches a lot of kids and they have to go outside. I ask if she can give me a schedule of outside play time. She is unable to pin it down she communicates and handwrites me her childcare hours overall for the Fall. (see attached in her handwriting). This is reflective of what has been going on before and after our chat until quite recently.

The schedule:

Mondays-Toddlers/Afterschool Kids

Tuesdays-Toddlers/Afterschool Kids

Wednesdays-Lots of toddlers-lots of noise/Afterschool Kids

Thursdays - "Quieter" after 1

Fridays - "Quieter" until afterschool (3:00)

(She tells me -every other Friday. Gives me her email too:
moonbeamsmomy@gmail.com)

6. **Fall 2014:** I try to encourage communication between us and text when I will be away for a few days. Don't receive any texts back. This is often the time I am recouping after super busy summers and trying to enjoy my home/ yard space much more than in the summer months when I'm all out working.

7. **April 2015:** outside play time ramps up and noise becomes excessive again and clearly discernable from my property.

8. **May 2015:** Having a super hard time using my home and prepping for an extremely rigorous summer of work with elementary aged kids, with camps at my studio, and high school kids to paint a 2,000 sq foot mural for the Boys & Girls Club. Also tasks associated w/ organizational prep for the Myrtle Street Community Avant Garden, Grant Applications etc...Unnerved by the constant daytime noise,
I call Code Enforcement for the first time on May 6, 2015 to see what options I have and if they can help as the neighbor seems to not be conscientious at all of her businesses impact.

Code Enforcement informs me that they don't deal with noise and that is up to the Police Department.

I do not want to call the police for fear that will escalate the situation and upset the kids. They let me know they are concerned with whether she is running a business and suggest I start keeping a log of activity.

9. **MAY 2015** – Unbelievably loud, many kids, balls, against the fence and into my yard with kids coming over almost daily as well as parents to retrieve balls. (Richard's Dad, Macy, Kiki/Robin)

10. **Mon 5.18.15**– After School very loud. Kids – total: 7 total, playing w/ her nephew? (a male adult visiting)
Kids I know, Kiki, Robin, Macy, in addition there are another 2 boys, 2 preschool kids
Playing, yelling, very piercing.

11. **Tues. 5.19.15** – Many toddlers in and out, door slamming incessantly with toddlers in and out of the house, in and out into the yard and inside again. (6 toddlers)
10 am- 1pm. I turn up music in effort to block out the racket.

12. **Wed 5.20.15** – **Toddlers and afterschool – in backyard 10 total after 2 pm.** (early school release day). Neighbor's 3 kids plus variety of others school age and younger.

13. **Wed 5.27.15** – **Toddlers, screaming, playing, door slamming, crying as of 8 am.** I ask her if she could please fix the screen door over the fence. She replies it is not a priority and she is not sure when she will get to it.

14. **Thurs 5.28.15** – In the morning, I go to talk to her before she gets busy with toddlers arriving. I say let's talk about this and come up with some solutions. She proceeds to tell me,

“there will be no solutions b/c I'm the only one with a problem,” “everyone she tells this to thinks it's crazy,” “i'm clearly not a mother,” “why do I live in the city?” “my kids call you the 'mean lady' and when they hear your voice their eyes get big” and basically i'm dumbfounded. I just say, “I feel like i'm being bullied,” and she responds that she feels like she is. I say, “I can't believe how entitled you are.” and she says “I'm not having this conversation,” and shuts the door in my face.

I return home and am completely shaken up. I call the Police Department and say I don't know what else to do and can't peaceably enjoy my home and my neighbor said I should talk to her if the noise bothers me and she just verbally assaulted me. They explain they can send the police over there to talk to her. I still don't want to go down that road knowing how upsetting it can be to kids. (was very upsetting to me growing up. And I don't want this kind of conflict in my living space).

They mention they have a departmental mediator who could work with us to resolve this conflict. I send an email and she gets back to me 5.29.15. Lacey-Ann Smith of BPD, Community Support Specialist.

Afterschool very loud and ball repeatedly thrown against the fence. 8 kids total.
Feels as if she's encouraging them to be loud.

15. **Sat 5.30.15** - Neighbor has a net installed between our fences- approximately 3 ft tall. Staple gun action for about 2 hours.Has screen door fixed too :)

16. **June 2015** - Lacey Smith from the Police Dept has various convos with each of us separately. After extensively working around neighbor's schedule for a facilitated meeting, she declines to meet and participate. During this time, the mediator communicates to me that Amy's foster child has to go back with her birth parents and is having a hard time and screaming a lot. That there will be a lot less childcare in the summer months. (This is when I'm all out working anyway in the community at the studio etc...)

17. **On June 4th** the mediator wrote me this: In regard to the schedule, Amy is willing to let you know what the kids typical day looks like. Do you want to provide her with your schedule or were you just thinking that you would like hers so you can plan around them? It doesn't matter either way; I was just thinking that in the meantime, while we are figuring out dates, I could pass that info along to her.

Then after going back and forth regarding possible dates I receive this on **June 17, 2015:**

Hi Maggie-

I heard back from Amy. She is not interested in being a part of the mediation process at this time. So where do you go from here? I talked with you about the civil options through the Court House on Main St. Please feel free to let me know if you want any more direction with that and I'll do my best to help. In regard to finding out the legalities behind opening a daycare in a residential setting, I would contact Zoning. I'm sorry that this has been a drawn out process to have it end unresolved.

Lacey Smith
Community Support Specialist

18. **Wed 6.3.15** – Parents picking up kids, 3 cars in eve 5:30 pm
19. **Thurs 6.4.15** – Quieter in the am, afternoon 6 kids walk to neighbor's house after school/3:15 pm. Play in backyard 8 kids total. 3 cars pick up.
20. **Tues 6.23.15** – Lots of Toddlers, crying about 3-3:30 pm. 5:45 pm Pickups, 2 cars
21. **Wed 6.24.15** – Lots of kids in afternoon : Playing, screaming etc...7 kids, Pick up 2 cars about 5:45 pm
22. **Thurs 6.25.15** – Afternoon pickup 4 pm, Grey SUV, in driveway/sidewalk **VT GMA.848**
23. **Tues 6.30.15** – Pick up by Silver Volvo , **VT GKB.227**
24. Week of June 8th , I'm at Studio working, meeting w/ COTS, prepping for camps and on-site at a painting job in Charlotte.
Week of June 15th : Studio Camp starts
Week of June 22nd : Studio Camp
Week of June 29th : Start on Mural Project and hit the ground running until mid/end August.
25. On **June 17, 2015** given neighbor decided to not take part in the mediation, I go to Planning & Zoning Office to inquire re options. I have a conversation with Mary O'Neil, whom I know from the Myrtle Street Avant Garden projects as well as Plan BTV South End. She gives me the Zoning Enforcement Complaint Form and I show her the handwritten schedule from the neighbor.
26. July, August: Code Enforcement investigates. I call with noise complaints coming from unpermitted business/home occupation.
27. **Thurs Aug.13.2015** – Toddlers 6 kids, drop offs and pick ups 3 cars.

Code is going to come over to listen. Neighbor provides false information and states per Code Enforcement:

On Thu, Aug 13, 2015 at 11:46 AM, Patricia Wehman

<pwehman@burlingtonvt.gov> wrote:

Hi, Maggie,

Upon receipt of your voicemail, I needed to do some work to be caught up to speed on the current state of this complaint. **The notes indicate that the property owner reported she watches only two children on one day a week and therefore does not meet the state threshold to be licensed.** I have asked for additional investigation after school starts up again in a couple of weeks.

Any and all documentation of dates, times and number of children would be helpful.

Regards,

Patti Wehman

Code Enforcement Case Manager

864-8524

Response:

From: **Maggie Standley** <maggiestandley@gmail.com>

Date: Thu, Aug 13, 2015 at 12:08 PM

Subject: Neighbor watches two children - one day a week? Hi Patti- follow up to Noise/ Unlawful Childcare issue

To: Patricia Wehman <pwehman@burlingtonvt.gov>, Mary O'Neil <mconeil@burlingtonvt.gov>

Hi Patti,

Thanks for getting back to me.

This statement is curious, unless she has had a complete change of schedule and day care operations.

Just this morning **i recorded the sound of at minimum 6 kids** in her small back yard. In addition, I took a photograph of a car parked on the corner while picking up a toddler/young child and that child walking down the sidewalk.

I am not at home with my notes, but had thought i sent documentation of dates/excessive noise with my complaint I filed this summer, after trying AT LENGTH to resolve this first with her personally and then through a mediator provided by the Police Department.

I also included with my complaint report, a handwritten note, in the neighbor's own handwriting of what her schedule was last September. I really hope to not have to live with this again this September after wrapping an extremely busy work season on my end.

If indeed, her schedule has changed, it would be most appreciated if she could indicate what day per week and what hours she watches those two children. I am more than willing to work around/with occasional childcare.

I'm also wondering if the City has a noise metering device they could send someone over to my home with at times to in fact measure the decibel level.

Many thanks,
Maggie

Maggie Standley
Beauty Asset Acquisition Specialist
[802.233.7676](tel:802.233.7676)
4A Howard St, Burlington VT 05401
Owner - [Wingspan Studio](#)
Founder - [The Avant Garden](#)

28. Aug 14, 2015 Code Enforcement responds to me regarding safety/State regs/noise

measuring device

"From: Patricia Wehman <pwehman@burlingtonvt.gov>

Date: Thu, Aug 13, 2015 at 2:02 PM

Subject: RE: Neighbor watches two children - one day a week? Hi Patti- follow up to Noise/

Unlawful Childcare issue

To: Maggie Standley <maggiestandley@gmail.com>, Mary O'Neil <MCOneil@burlingtonvt.gov>

Cc: William Ward <wward@burlingtonvt.gov>

No, Maggie, we do not have a device that can be used to calculate noise levels.

I appreciate all you have attempted to do to navigate with the neighbor a solution to the challenges. I would like to go over to your place when you are experiencing the unreasonably loud noise from the neighbor's yard to document independently the situation. The more children, the better. I am available M-F, 8a-4.30p and possibly outside of those hours if necessary. My direct line at work is 864-8524 and my work cell is 557-2678.

Finally, I suggested when we originally spoke about this situation, that you could report your concerns to the State licensing office as this, at the end of the day, seems to be a concern for child safety. The DCF Consumer Line is 1-800-649-2642.

I look forward to hearing from you.

Patti

- 29. Thrs Aug 20.2015** - Toddlers being picked up – 2cars/ SUV, **VT GMA. 848.** parked in driveway across sidewalk, says see you Monday. Other car: Rough Francis musician **VT ESN.770** pick up
- 30. Thrs Aug 27. 2015-** Home after work, **kids from at least 3 families.** Pick up between 5-6:15 out of backyard. **Hear names of Kiki-one family, Zoe-2nd family, Stella-3rd family, Miles** (may have been with Mom doing pickup)
- 31. Wed 9.2. 2015** – New mom (don't recognize) dropping off 2 toddlers.
- 32. Fri 9.11.15** – Awoken to screams about 10 am. Hear names of **Zoe , Stella called by neighbor** (wrapped up mural project at 10 pm preceding night). **Then afterschool kids added to mix.**
- 33. Wed 9.16.15** – **4 toddlers plus a bit older boy** (afterschool?) he is loud. Pick ups 3 cars.
(away Thurs/Fri- me)
- 34. Mon 9.21.15** – Report to Code Enforcement ,9 a.m. - **4 Toddlers running around** outside in backyard barefoot, she's on her mobile-emailing or texting...they have come outside like that, she then tells them to put on shoes.
I also inquire to Code Enfor: "Since she says she does it only one day a week??? can you ask her what day that is and then we give that a listen to be all transparent etc..?"
- 35. Mon 9.28.15** - Report to Code Enforcement to document childcare 10 am - Noon. Shrieking, playing, screaming. **4-5 Toddlers.**
- 36. Wed 10.7.15** – Noon, **4 toddlers, screeching, crying, playing,** she takes them

inside

37. Thurs 10.8.15 – Report to Code Enforcement in the morning, 11:30 am, many toddlers in yard. Can hear w/ windows closed.

Report again: 4 pm, plus two older kids. One kid, new client (African?) another boy, (Caucasian long dark hair). 3 cars pick up. ("I just returned from downtown and stopped into P&Z to inquire about where things were. Currently there are 4 additional kids over there in addition to the neighbor's 3 kids. If someone wants to stop by that would be great.")

(2 toddlers-one has long straight brown here and the other one is chocolate colored with curly dark short here. This is in addition to neighbor's children. The two youth i've seen/heard are 2 boys-one is African American the other is white w/ dark hair).

This response from Code: From: Patricia Wehman <pwehman@burlingtonvt.gov>

Date: Thu, Oct 8, 2015 at 1:58 PM

To: Maggie Standley <maggiestandley@gmail.com>

Cc: Jeanne Francis <JFrancis@burlingtonvt.gov>, William Ward <wward@burlingtonvt.gov>

The status of this particular complaint has shifted a bit and is now a zoning investigation that has become a violation. I will need to check with Bill about the specifics. There is nothing our office can do about the noise. I can tell you if a property owner applies for a zoning permit, a Z should be hung in a visible spot on the front of her house where the average passerby would see it. As soon as that appears, there is a 15 day appeal period for interested/affected parties.

Should you have any questions, please feel free to reach out.

38. Wed 10.14.15 - Childcare very noisy, go inside , close windows. Write email to try and get some help/info where this is: Report to Code Enforcement and Planning & Zoning

From: Maggie Standley [mailto:maggiestandley@gmail.com]

Sent: Wednesday, October 14, 2015 1:02 PM

To: Patricia Wehman <pwehman@burlingtonvt.gov>; Mary O'Neil <MCOneil@burlingtonvt.gov>; Maggie Standley <maggiestandley@gmail.com>

Cc: Jeanne Francis <JFrancis@burlingtonvt.gov>; William Ward <wward@burlingtonvt.gov>

Subject: 10/14/15 - Toddler screaming/what's the status pls?/Recap

Hi,

I'm circling back and trying to get a read on where this stands please and thank you very much for your time and effort on this.

It's Wed, 10/14/15. I'm indoors, all windows closed and can hear kiddos screeching etc...

Response back from Code:

From: Patricia Wehman <pwehman@burlingtonvt.gov>

Date: Wed, Oct 14, 2015 at 1:34 PM

Subject: RE: 10/14/15 - Toddler screaming/what's the status pls?/Recap

To: Maggie Standley <maggiestandley@gmail.com>, Mary O'Neil <MCOneil@burlingtonvt.gov>

Cc: Jeanne Francis <JFrancis@burlingtonvt.gov>, William Ward

<wward@burlingtonvt.gov>

Hi Maggie,

I understand your frustration. I'm going to try to explain how your complaint is working its way through our system. Very simply, there are two major tracks for Code Enforcement. One is zoning, the second is rental housing. Initially, it appeared that your complaint may have had enforcement legs through minimum housing, however, that is not the case. It is a zoning issue and at this point, it appears to be an unregistered, home-based business. The property owner was issued a warning notice (it states that we've become aware of a possible violation and we would like to discuss the issue/concerns.) The property owner did that and was instructed to apply for a zoning permit, received a Z to hang in her window, which would have alerted the public that something was going on at that property and provided the public notice of appeal. To my knowledge, there is no application for this property. The zoning enforcement side of code enforcement is proceeding according to statute and ordinance.

I suspect you would have liked a speedier solution. Unfortunately, one does not exist. Feel free to check in with me weekly if you would like and I will continue to update you as there is movement.

Regards,
Patti

39. Thurs 10.22.15 – Very noisy and call Police. They come over and by time get here, 15-20 mins, they are inside. Speak w/ Corporal Jessica Norris. Complaint re Noise #: 15BU 30485. Explain ongoing situation to her.

I report this to both Code Enforcement and Planning & Zoning

From: Maggie Standley <maggiestandley@gmail.com>

Date: Thu, Oct 22, 2015 at 12:56 PM

Subject: 10/22 Toddlers-call to Patti/Police Report- Zoning Complaint 6/17/15

To: Patricia Wehman <pwehman@burlingtonvt.gov>, Maggie Standley <maggiestandley@gmail.com>

Cc: Mary O'Neil <MCOneil@burlingtonvt.gov>, Jeanne Francis <JFrancis@burlingtonvt.gov>, William Ward <wward@burlingtonvt.gov>

Hi Patti,

Good to talk this morning and get some clarity. Thank you for your time. From what I understand, neighbor was sent a Zoning Violation Notice on Oct 13, 2015 for operating a business out of her home, which is causing the unreasonable noise, which was the cause for my complaint after trying to resolve it with her through several channels for over 1 year now.

To underline, included in that complaint is a handwritten note in her writing, outlining the childcare schedule as of last Fall. Mons-Fris w/ both toddlers during the day and after school care.

She has until Oct 28th to apply for a Zoning Permit for a single family home occupation status. She has opted to apply for a zoning permit. She can do this OR discontinue doing daycare.

It came up in our conversation today, that two of her children, are foster children. This makes a difference apparently, which is news to me. When i refer or have referred to her children, 3 of them, i have always included the 2 foster children , who are toddlers in there. Her other older daughter, is at school during the day and while I am not sure, think is a biological child.

I am NOT in any way complaining regarding her children's noise from playing in the yard. It is the additional youth she watches on a regular basis and disregards the residential nature of the neighborhood.

So, if i understand correctly, the neighbor has been issued a violation notice and has until Oct 28 to file for a single family home w/ a business?

The fact that she has two foster kids as part of her total 3 kids, somehow influences the State and i probably should contact them. (which i have been avoiding b/c i don't necessarily want her to get in trouble...just be a more respectful neighbor :)

I called the police this morning to issue a noise complaint after disturbed by the noise. Report was taken by Jessica Norris and report # is 15BU 30485.

In the past, i have not wanted to call the police. I did work for about 1 month with their "mediator", Lacy, and she was to have a meeting w/ Amy Pickering and I to work this out. Amy declined to meet.

I will forward you all those emails.

Many thanks,
Maggie

40. Tues 10.27.15 – 4:45 pm Pickup Car in driveway/sidewalk blocked. Maroon Car VT ESL.xxx. New car? (Capt Bob Sticker)

41. Thurs 10.29.15 – 11:30 am pickup . Car on corner (Sarah Goldstein's daughter)

42. On October 13, 2015 she was sent a Notice of Violation from Code Enforcement. See attached.

43. On October 22,2015 she applied for a Zoning Permit for a (per her description): Small (2 children) childcare *not state licensed/legal. See attached.

44. On October 22, 2015 she was granted a Certificate of Appropriateness by Planning & Zoning staff person, Mary O'Neil for a **“Family daycare.”** She was also granted a permit.

45. October 23, 2015 - I call P&Z to try and understand why Conditional Use was not required given she doesn't meet the definition of the above. See attached emails, during which different P&Z staff left out part of the definition of Article 13 when communicating with me.

Ms. O'Neil explained to me that the State does not regulate the care of childcare provided by 2 families or less. She said to me, “it is not required by the State, **so the State won't register her.”** The city decided to give her a permit, she says. You

can appeal it to an impartial body, the DRB. (see emails).

Mary says she did not realize this until she spoke to DCF on the phone-that under two fams is not regulated. (Whilst the State stipulates registration by # of families, the city relies on # of children and neighbor says she is only watching two children one day a week ;). However, according to two sources, one can register as a daycare provider regardless of the number of families you watch).

I inquired as to if she took into consideration the complaint I made to Code Enforcement, the calls, the schedule in the neighbors handwriting and she replied, "I go by what an applicant tells me. I asked did she not recall our conversation in June regarding the many toddlers whilst showing her the neighbors schedule in her own handwriting. She did not remember this.

Given the inability of the city to help regulate this, as I had assumed before getting the State involved, I see no option but to file a complaint for an illegal Childcare business w/ the State.

46. Oct 23, 2015 - Email below summarizing above convo w/ Planning & Zoning

From: Maggie Standley <maggiestandley@gmail.com>

Date: Fri, Oct 23, 2015 at 2:50 PM

Subject: Thank you Mary for the explanation-re Noise Complaint/ Childcare Permit granted 10.22.15

To: Mary O'Neil <MCOneil@burlingtonvt.gov>, William Ward <wward@burlingtonvt.gov>, Jeanne Francis <JFrancis@burlingtonvt.gov>, Maggie Standley <maggiestandley@gmail.com>

Cc: Patricia Wehman <pwehman@burlingtonvt.gov>

Mary,

We just got off the phone and I really thank you for your time and the explanation how this issue has been resolved from a City perspective w/ a zoning permit granted to 154 Park St yesterday to operate a home Family daycare serving 2 families or less (including one own's kids whether foster children or not).

It is now clear to me that a State registration or license isn't required by the city, bc if one is watching youth from two families, including one's own, up to 10 children total, the State doesn't require one either.

That noise is besides the point and not regulated by your two departments.

Good to know these details regarding what was uncovered with conversations with the folks at State level.

I will speak with someone at the DCF State office to see how the "two family" limit is verified if the unreasonable noise continues and talk to them about some sort of "acceptable, measurable level of noise."

As i said on the phone, whether a neighbor runs a day care or a car mechanics shop or another home based business is besides the point to me. What is of concern is the noise and impact said business generates upon my right to enjoy my home. I know the neighbor now has a right to run this business, but the noise seems left out of the equation in terms of existing

guidelines.

I had been basing my "noise complaint" on the misunderstanding that this neighbor had to be licensed or at least, registered with the State as a daycare provider first before receiving a city permit. I now understand that is not the case and this was resolved through your : Code Enforcement and P&Z investigative work.

I appreciate everyone's time on this and understand I have 15 days to appeal the decision. I feel this is kind of a catch 22 situation in so far as the noise, of course, generated by this kind of business. I work with youth, a lot. I run classes and work in schools and for different youth organizations. Unfortunately, I didn't realize that this kind of noise level could go on next to my home as well.

I will explore some other options/avenues at this point. If one can do daycare, in their home, in a residential neighborhood, there has to be some sort of maximum noise level acceptable that is just not regulated at this point in Burlington.

Many thanks for your assistance,
Best,
Maggie

Call DCF to report unlicensed daycare business – make a complaint over the phone with Elaine Crawford of DCF via their call #: 800.649.2642. She agrees that living next to a Childcare biz can be a challenge but neighbors usually work it out. The State does not have noise regulations per this and city probably best route to go.

I file saying she is watching multiple kids from multiple families and this has been going on for about 2 years. It creates a lot of noise and she is unwilling to cooperate to work out an outside time play schedule that works for both of us. Sometimes she is out there with the kids and other times she is not – and is yelling to them from indoor her house. I also let Elaine know that I believe she is a foster care provider as well.

47. Nov 4, 2015 - Continue to try and understand how staff reached this decision that disregards the definition in the ordinance and see below various responses I receive:

From David White, Director of P&Z:

On Wed, Nov 4, 2015 at 2:53 PM, David E. White <DEWhite@burlingtonvt.gov> wrote:

At the risk of adding more confusion, let me jump in and try to clarify...

Family Daycares are specifically defined and described as being "considered by right to constitute a permitted accessory use to single detached dwellings." (emphasis added)

When an activity is defined as being allowed "by-right" it means that as long as it meets the requirements of the ordinance it must be allowed and can be permitted by staff (rather than going to the DRB). And when a use is defined as being "permitted" it expressly means that it is allowed and not considered a conditional use (which would otherwise go to the DRB for approval rather than by staff).

Use of both terms may be duplicative in this case, but the point is clear - that this activity should be permitted administratively **as long as it meets the requirements of the ordinance which in this case that it occurs as an accessory use within a single-family home.**

If you disagree with the staff approval, you can appeal the decision to the DRB, and make your case as to why you feel staff's interpretation of the ordinance and decision in this case was incorrect. The appeal period for this project ends Nov 6.

David E. White, AICP
Director of Planning & Zoning
City of Burlington, VT

From: Mary O'Neil <MCOneil@burlingtonvt.gov>
Date: Wed, Nov 4, 2015 at 10:44 AM
Subject: RE: Permit documents/Home Occupation Application - 154 Park St
To: Maggie Standley <maggiestandley@gmail.com>, Patricia Wehman <pwehman@burlingtonvt.gov>, William Ward <wward@burlingtonvt.gov>, Jeanne Francis <JFrancis@burlingtonvt.gov>, "Smith, Lacey-Ann" <LSmith@bpdvt.org>

Maggie,
Small Daycares and Home Occupations are both within the Special Use Regulations of the Comprehensive Development Ordinance; Article 5, Part 4. While related, they are not the same.

A Family Daycare, as defined in Article 13 is considered by right to constitute a permitted accessory use to a single detached dwelling. The next step in the process, if you choose to continue, is to appeal the administrative decision to the Development Review Board. They will have the unique opportunity to determine if impacts associated with the family daycare are reasonable and consistent with other similar uses.

Best regards,
Mary O'Neil, AICP
Senior Planner
Coordinator, Certified Local Government Program
mconeil@burlingtonvt.gov

** Please note that this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

48. Nov 5, 2015 – I at this point hire an attorney because I am flabbergasted by the run around , neighbor's lies, unwillingness to cooperate and efforts to skirt the regulations. I am not in the practice of hiring legal representation. We file an appeal. Lawyer sends letter saying will pull back appeal if reapplies under Conditional Use and we can work out a schedule. No response. I send an email asking what she wants and do we have to go through all this. No response.

49. Nov 7, 2015 – Neighbor applies to get registered.
From Kelly Lyford, Licensing Supervisor, CDD via email: "On November 7, 2015 it appears that we received an application from Amy Pickering to open a registered home at 154 Park Street, Burlington."

Childcare and pick ups on these dates i've seen in November:

Tues 11.3.15, Wed 11.4.15, Sun 11.8.15 (not sure if childcare but as if she told them to go all out, playing, screeching, screaming). I travel out of state from Nov 11 – 22.

- 50. 12.3.15– loud, shrieking can hear from inside, windows closed, 3:30 pm
- 51. 12.14.15 – Kiki picked up by Dad on corner, 5:45 pm
- 52. 12.21.15 – Silver Volvo picking up Sara's girl, 5:40 pm
- 53. 12.22.15 – Another toddler over there plus hear her call Lulu.



CODE ENFORCEMENT 645A P Burlington VOICE (802) 863-0442 FAX: (802) 652-4221	EXHIBIT 4
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NOTICE OF ZONING VIOLATION (NOV)

October 13, 2015

Mailed Certified Mail 7013 3020 0001 6717 8114
And FIRST CLASS MAIL

AMY E. PICKERING
154 PARK ST
BURLINGTON VT 05401

NOTICE OF VIOLATION AT:
154 PARK STREET, BURLINGTON, VT (Premises)
TAX LOT #044-1-105-001

Zoning Violation# 295531

Dear Owners,

It has come to the attention of this office that a zoning violation exists at 154 Park Street.

Description of Violation: **Change of use from single family to single family with a home occupation (small day care) use, without zoning approval.** Premises failed to obtain a Certificate of Occupancy for ZP 14-0485CA and ZP 14-0693.

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 5, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars (\$200.00) for each day that each of the violations noted above continues. You may submit an application to attempt correction of the violations, however, be advised application and filing fees are subject to a fee increase for permits required to correct a violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violations. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violations are not remedied as provided for in this notice, the City will pursue enforcement for each of the violations as provided for by law.

This NOV is a decision of the Assistant Administrative Officer, designee of the Burlington Zoning Administrator, may be appealed to the Development Review Board in accordance with the provisions of CDO Sections 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV October 2, 2015, and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Appeal fee and complete application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by **4 pm on October 28, 2015**; an appeal shall not be perfected until the fee is received. Failure to file an appeal by October 28th will render this decision final.

If you have any questions, please call me at (802) 864-8518.

Sincerely,

Jeanne Francis
Assistant Administrative Officer
Enclosures: Violation Details

Cc: Land Records for Tax Lot # 044-1-105-001

VIOLATION DETAILS**LOCATION:** 154 Park Street**DECISION DATE:** October 13, 2015**VIOLATION DESCRIPTION:** Change of use from single family to single family with a home occupation (small day care) use, without zoning approval. Premises failed to obtain a Certificate of Occupancy for ZP 14-0485CA and ZP 14-0693.

- FINDINGS:**
- May 28, 2015 our office received a written complaint regarding an unpermitted daycare use at Premises.
 - On June 26, 2015, Code Office mailed a notification letter to Owner regarding a complaint they received about the operation of a daycare at 154 Park Street without zoning approval; complaint verified.
 - Throughout June, July and August additional complaints were received in the Code office.
 - On August 26, 2015, Code Office spoke with Owner, explained she would need to discontinue the daycare use or apply for a zoning permit; she opted to apply for a permit.
 - To date, our office continues to receive complaints for a small day at Premises and Owner has failed to submit a zoning application for a small daycare at premises to the Planning/Zoning Office; to date Premises remain in violation of the CDO.
 - Owner failed to comply with approvals related to ZP 14-0485CA and currently does not have a certificate of occupancy; permit expires October 24, 2015.
 - Failure to obtain a certificate of occupancy for ZP 14-0693CA; building permit closed February 23, 2015.

REMEDY OPTIONS: Within seven (7) days from receipt of this notice you may cure the violation by:

- 1) – Discontinuing the daycare use noted above. Owner **MUST** obtain a certificate of occupancy for ZP 14-0485CA and 14-0693CA. ; **or**
- 2) - Obtaining approval from the City's Department of Planning and Zoning for a small daycare without an approved zoning permit (permit application **fee is doubled** if complete application is submitted within seven days from receipt of the NOV, **tripled** if a complete application is submitted 7-15 days from receipt of the NOV, **or triple plus \$75 per hour of Code Enforcement staff time** (up to \$500) if a completed application is submitted after 15 days from date of NOV receipt). See CDO Section 2.7.8. **PLEASE NOTE:** If the zoning permit request is denied, the violation is **NOT** cured. Owner shall be required to remove the violation as noted in #1 above or request an agreement as noted in #3 below within five (5) business days from date of the permit denial to remedy the violation; **or**
- 3) - Entering into an Agreement with the City of Burlington to extend deadlines in which to bring Premises into compliance with the City's ordinance (**administrative fees required**).

APPEAL RIGHTS: You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice**. **The deadline for filing an appeal is 4 pm on October 28, 2015.** Submit a complete application with ZV# and appropriate fee to the Department of Planning and Zoning, accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

REGULATION CDO Article(s): 2, 3, 5, 12 and 24 VSA §4451
CITATION:



Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/pz

RECEIVED

OCT 22 2015

EXHIBIT 5

DEPARTMENT OF PLANNING & ZONING

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 154 Park Street Burlington, VT 05401

PROPERTY OWNER*: Amy Pickering

*If condominium unit, written approval from the Association is also required

APPLICANT:

POSTAL ADDRESS: 154 Park St.

POSTAL ADDRESS:

CITY, ST, ZIP: Burlington, VT 05401

CITY, ST, ZIP:

DAY PHONE: (802) 355-7698

DAY PHONE:

EMAIL: moonbeamsmommy@gmail.com

EMAIL:

SIGNATURE: Amy Pickering

SIGNATURE:

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

Description of Proposed Project:

Small (2 children) childcare

*not state licensed/legal

Existing Use of Property: [X] Single Family [] Multi Family: # ___ Units [] Other: ___

Proposed Use of Property: [X] Single Family [] Multi Family: # ___ Units [X] Other: small childcare

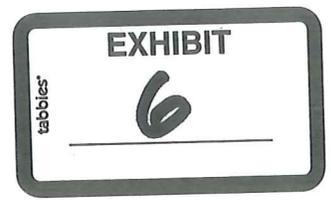
- Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes [] No [X]
Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes [] No [X]
For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes [] No [X]
Are you proposing any work within or above the public right of way? Yes [] No [X]

Estimated Construction Cost (value)*: \$ 0

(*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Planning and Zoning at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Zone: RM Eligible for Design Review? 4 Age of House 1928 Lot Size 2613
Type: SN [] AW [] FC [] BA [] COA 1 [X] COA 2 [] COA 3 [] CU [] MA [] VR [] HO [] SP [] DT [X] MP []
Check No. 919 Amount Paid 80- Zoning Permit # 16-0511CA



The Vermont Statutes Online

Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 007 : Bylaws

§ 4412. Required provisions and prohibited effects

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

(A) No bylaw nor its application by an appropriate municipal panel under this chapter shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under subdivision 4382(a)(10) of this title or the effect of discriminating in the permitting of housing as specified in 9 V.S.A. § 4503.

(B) Except as provided in subdivisions 4414(1)(E) and (F) of this title, no bylaw shall have the effect of excluding mobile homes, modular housing, or prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. A municipality may establish specific site standards in the bylaws to regulate individual sites within preexisting mobile home parks with regard to distances between structures and other standards as necessary to ensure public health, safety, and welfare, provided the standards do not have the effect of prohibiting the replacement of mobile homes on existing lots.

(C) No bylaw shall have the effect of excluding mobile home parks, as defined in 10 V.S.A. chapter 153, from the municipality.

(D) Bylaws shall designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings. No bylaw shall have the effect of excluding these multiunit or multifamily dwellings from the municipality.

(E) Except for flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, no bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

(i) The property has sufficient wastewater capacity.

(ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.

(iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

(F) Nothing in subdivision (1)(E) of this section shall be construed to prohibit:

(i) a bylaw that is less restrictive of accessory dwelling units;

(ii) a bylaw that requires conditional use review for one or more of the following that is involved in creation of an accessory dwelling unit:

(I) a new accessory structure;

(II) an increase in the height or floor area of the existing dwelling; or

(III) an increase in the dimensions of the parking areas.

(G) A residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home.

(2) Existing small lots. Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any bylaw, including an interim bylaw, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw.

(A) A municipality may prohibit development of a lot if either of the following applies:

(i) the lot is less than one-eighth acre in area; or

(ii) the lot has a width or depth dimension of less than 40 feet.

(B) The bylaw may provide that if an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

(i) The lots are conveyed in their preexisting, nonconforming configuration.

(ii) On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.

(iii) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.

(iv) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. chapter 64.

(C) Nothing in this subdivision (2) shall be construed to prohibit a bylaw that is less restrictive of development of existing small lots.

(3) Required frontage on, or access to, public roads, class 4 town highways, or public waters. Land development may be permitted on lots that do not have frontage either on a public road, class 4 town highway, or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws. This approval shall be pursuant to subdivision bylaws adopted in accordance with section 4418 of this title, or where subdivision bylaws have not been adopted or do not apply, through a process and pursuant to standards defined in bylaws adopted for the purpose of assuring safe and adequate access. Any permanent easement or right-of-way providing access to such a road or waters shall be at least 20 feet in width.

(4) Protection of home occupations. No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

(5) Child care. A "family child care home or facility" as used in this subdivision means a home or facility where the owner or operator is to be licensed or registered by the State for child care. A family child care home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property. A family child care home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 3511(7), shall be considered to constitute a permitted use of property but may require site plan approval based on local zoning requirements. A family child care facility serving more than six full-time and four part-time children may, at the discretion of the municipality, be subject to all applicable municipal bylaws.

(6) Heights of renewable energy resource structures. The height of wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high on sloped roofs, any of which are mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation. For the purpose of this subdivision, a sloped roof means a roof having a slope of more than five degrees. In addition, the regulation of antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, may be exempt from review under this chapter according to the provisions of that section.

(7) Nonconformities. All bylaws shall define how nonconformities will be addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots.

(A) To achieve the purposes of this chapter set forth in section 4302 of this title, municipalities may regulate and prohibit expansion and undue perpetuation of nonconformities. Specifically, a municipality, in its bylaws, may:

(i) Specify a time period that shall constitute abandonment or discontinuance of that nonconforming use, provided the time period is not less than six months.

(ii) Specify the extent to which, and circumstances under which, a nonconformity may be maintained or repaired.

(iii) Specify the extent to which, and circumstances under which, a nonconformity may change or expand.

(iv) Regulate relocation or enlargement of a structure containing a nonconforming use.

(v) Specify the circumstances in which a nonconformity that is destroyed may be rebuilt.

(vi) Specify other appropriate circumstances in which a nonconformity must comply with the bylaws.

(B) If a mobile home park, as defined in 10 V.S.A. chapter 153, is a nonconformity pursuant to a municipality's bylaws, the entire mobile home park shall be treated as a nonconformity under those bylaws, and individual lots within the mobile home park shall in no event be considered nonconformities. Unless the bylaws provide specific standards as described in subdivision (1)(B) of this section, where a mobile home park is a nonconformity under bylaws, its status regarding conformance or nonconformance shall apply to the parcel as a whole, and not to any individual mobile home lot within the park. An individual mobile home lot that is vacated shall not be considered a discontinuance or abandonment of a nonconformity.

(C) Nothing in this section shall be construed to restrict the authority of a municipality to abate public nuisances or to abate or remove public health risks or hazards.

(8)(A) Communications antennae and facilities. Except to the extent bylaws protect historic landmarks and structures listed on the State or National Register of Historic Places, no permit shall be required for placement of an antenna used to transmit, receive, or transmit and receive communications signals on that property

owner's premises if the area of the largest face of the antenna is not more than 15 square feet, and if the antenna and any mast support do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

(B) If an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, institutional, nonprofit, or public purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, "downhill ski area" means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports.

(C) The regulation of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter when and to the extent jurisdiction is assumed by the Public Service Board according to the provisions of that section.

(D) A municipality may regulate communications towers, antennae, and related facilities in its bylaws provided that such regulations do not have the purpose or effect of being inconsistent with subdivisions (A) through (C) of this subdivision (8).

(9) De minimis telecommunications impacts. An officer or entity designated by the municipality shall review telecommunications facilities applications, and upon determining that a particular application will impose no impact or de minimis impact upon any criteria established in the bylaws, shall approve the application. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2005, No. 172 (Adj. Sess.), § 5, eff. May 22, 2006; 2007, No. 79, § 15; 2007, No. 79, § 15, eff. June 9, 2007; 2009, No. 54, § 45, eff. June 1, 2009; 2011, No. 53, § 14e, eff. May 27, 2011; 2011, No. 137 (Adj. Sess.), § 7, eff. May 14, 2012; 2011, No. 155 (Adj. Sess.), § 14; 2011, No. 170 (Adj. Sess.), § 16e, eff. May 18, 2012; 2013, No. 16, § 5, eff. May 6, 2013; 2013, No. 96 (Adj. Sess.), § 162; 2013, No. 131 (Adj. Sess.), § 127, eff. May 20, 2014.)



From: "Benedict, Jennifer" <Jennifer.Benedict@vermont.gov>
Date: January 5, 2559 BE at 5:58:19 AM EST
To: Maggie Standley <maggiestandley@gmail.com>
Cc: "Lyford, Kelly" <Kelly.Lyford@vermont.gov>, "Taylor, Jennifer" <Jennifer.Taylor@vermont.gov>
Subject: RE: Jen Benedict, Director of Child Care Licensing

Ms. Standley,

I have responded to your questions below. Please bear in mind that any of these questions and responses taken out of context may be misrepresentative of the actual process, absent additional detail. That being said, the below responses should suffice for your purposes. Should you learn additional information regarding the initial situation that prompted your contact with us, please call the Child Development Division's 800 number and your information will be recorded and processed appropriately.

Thank you,

Jen

Is it correct that one can become a Registered Daycare Provider, irregardless of **how few kids one is watching? true, though it may not make sense for someone who only desires to and meets the criteria for providing care under the Legally Exempt Child Care rules to become a registered and/or licensed child care provider.**

Additionally, I have gathered that if one chooses to be unregistered, and claims they are watching the children from two families or less, **they must be the SAME two families, consistently? correct, though when one family ends care the provider has the right to care for another family while still maintaining care for two families or less.**

Re Dual Licensing for Home Daycare Providers & Foster Care Providers: Am I correct in that the CDD is very strict in allowing this due to the inherent trauma of foster kids and for their well-being and that of other children in care? **You are correct that CDD exercises great caution in approving registered/licensed child care providers to become foster parents, and this is so for a variety of reasons, including those you mentioned above. However, dual approved home variances are at times granted and are greatly dependent upon the specific circumstances.**

*Jen Benedict, Director
Child Care Licensing & Financial Assistance Program
DCF-Child Development Division*

(c) [802-224-6236](tel:802-224-6236)

From: Maggie Standley [maggiestandley@gmail.com]
Sent: Monday, January 04, 2016 6:33 PM
To: Benedict, Jennifer
Cc: Lyford, Kelly; Taylor, Jennifer
Subject: Jen Benedict, Director of Child Care Licensing

Hello & Happy New Year-

Thanks so much for writing. I believe I have had all my questions answered but would just like to confirm I understand the particulars correctly as it is a bit complicated.

Thanks for the offer of a phone conversation, but won't have time tomorrow, so a quick email back would be fine-

Just confirming not asking new ones :)

Thanks much,
Maggie

Maggie Standley
Beauty Asset Acquisition Specialist
[802.233.7676](tel:802.233.7676)
4A Howard St, Burlington VT 05401
Owner - [Wingspan Studio](#)
Founder - [The Avant Garden](#)

On Mon, Jan 4, 2016 at 3:39 PM, Benedict,
Jennifer<Jennifer.Benedict@vermont.gov> wrote:
Hello Ms. Standley,

I am just returning from time off for the holidays and wanted to provide an opportunity to discuss your concerns with me directly. It seems you have several questions you feel have been unanswered and perhaps a phone conversation would be most efficient?

You stated the city hearing is scheduled tomorrow so if you are able we could talk sometime before 9:00am? If not then, please indicate what time would work for you and I will try to adjust my schedule accordingly.

Thank you,

*Jen Benedict, Director
Child Care Licensing & Financial Assistance Program*

From: Maggie Standley [mailto:maggiestandley@gmail.com]
Sent: Monday, January 04, 2016 12:13 PM
To: Lyford, Kelly; Taylor, Jennifer; Benedict, Jennifer
Subject: DCF- CDD: Please confirm below info: Hi Kelly-thanks much!

Greetings all and Happy New Year,

I look forward to confirming the information in my previous email as the city is taking the matter up tomorrow and I appreciate your help in understanding the guidelines.

Is it correct that one can become a Registered Daycare Provider, irregardless of how few kids one is watching?

Additionally, I have gathered that if one chooses to be unregistered, and claims they are watching the children from two families or less, they must be the SAME two families, consistently?

Re Dual Licensing for Home Daycare Providers & Foster Care Providers: Am I correct in that the CDD is very strict in allowing this due to the inherent trauma of foster kids and for their well-being and that of other children in care?

Many thanks,
Maggie

Maggie Standley
Beauty Asset Acquisition Specialist
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