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Permitting & Inspections
645A Pine Street
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Burlington, VT 05402-0849

Re: ZAP-22-4

Dear Zoning Office/Development Review Board,

On behalf of our client, Jeannine Boix-Vives, we write this letter to describe our appeal of the Adverse Zoning Determination issued in ZP #: 22-503 on September 16, 2022 (the "Adverse Determination"). We filed our appeal (ZAP-22-4) through the online permitting system on September 26, 2022.

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 that explicitly merged the lots. The City recognized these parcels as separate lots on the grand list and has issued separate tax bills for each parcel.

The Adverse Determination found that, because the lot line between 89 Chestnut Terrace and 41 South Street was omitted in two surveys recorded in the land records, the Lots merged. However, both of those surveys were completed for the purposes of completing boundary adjustments that were unrelated to the lot line between 89 Chestnut Terrace and 41 South Street. The permit applications at the time said nothing of merging the Lots, and the permit decisions said nothing of the merging of the Lots.

We do not think that the lack of an internal lot boundary on these external boundary adjustment surveys should be the basis for the merger of the Lots, particularly when the City has identified them 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 our client never received notice that the Lots were merged and never had an opportunity to appeal such a decision. Therefore, we request that the Development Review Board find that the Lots have not merged and remain separate parcels.

Background

Our client (Jeannine Boix-Vives) is interested in selling some land she owns in Burlington. She is hoping to convey one lot — 89 Chestnut Terrace — and retain one lot — 41 South Street.

We had requested a formal determination from the Department of Permitting & Inspections (the “Department”) that the Lots are indeed separate lots.

In the Adverse Determination, the Department concluded that the Lots were one lot. 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. Our client does indeed receive 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 our client’s property as one lot. The Department concluded that the Lots are one lot, because it must defer to what is depicted on a survey when lot information differs from what is in the City’s tax parcel map.

Discussion

While we understand the Department’s argument, we disagree with their conclusion as it does not take into account the full record and deed information — which demonstrate the Lots are indeed two separate lots.

Regarding the surveys, both 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). While the boundary line adjustment surveys do not show the internal boundary between 89 Chestnut Terrace and 41 South Street, these boundary line adjustments involved minor adjustments to external lot boundaries and had nothing to do with merging 41 South Street and 89 Chestnut Terrace.

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 internal lot boundary between 41 South Street and 89 Chestnut Terrace was irrelevant for the purposes of these two boundary adjustments. And so, it is understandable for the boundary line adjustment surveys not to depict the internal lot boundary.

Section 10.1.5 of the Zoning Ordinance contains a provision governing lot line adjustments. The provision specifically requires a boundary line adjustment survey to include the words “[a]pproval of this lot line adjustment plat does not constitute the creation of a separate parcel or lot. It adjusts the physical location of the common boundary of the adjoining parcels or lots.” The “common boundary of the adjoining parcels or lots” in each boundary line survey was the external boundary line — which is clear on each survey.

This language further demonstrates that a boundary line adjustment survey is only meant to modify the boundary line in question, as opposed to all boundary lines depicted or not depicted on the survey.

In addition, the doctrine of automatic lot merger would not necessitate the merger of 41 South Street and 89 Chestnut Terrace, because they are both large parcels that conform with the City of Burlington’s minimum lot size requirements. Importantly, we are not aware of any municipal action that merged the lots and it appears that, based on the Grand List, the City considers these Lots as separate parcels.

For all of the reasons stated above, we respectfully request the Development Review Board vacate the Department’s Adverse Zoning Determination and direct the Department to instead issue a Zoning Determination concluding that 89 Chestnut Terrace and 41 South Street are indeed two separate lots.

Thank you for taking the time to review.

Very truly yours,

GRAVEL & SHEA PC



Zachary R. Berger

ZRB:kad