

March 21, 2023

Attn Scott Gustin
Burlington Development Review Board
645 Pine Street
Burlington VT 05401

Re: 98 Sunset Cliff, Burlington

Dear Scott

I write on behalf of my client, Bonnie Ferro. As you know, Bonnie did not receive notice of the City of Burlington Development Review Board's ("DRB's") review of the 98 Sunset Cliff property owner's application for the construction of a single family home and associated improvements (to include a pickleball court).

Ms. Ferro received a letter from the DRB acknowledging the Notice error (admitting that abutters to another property were notified in error) and stating that the appeal period for the permit approval would not expire until March 23, 2023. The letter instructed her to file a request for a re-opening (essentially reconsideration) of the hearing and application in the above referenced matter. Ms. Ferro has done that, but to the extent necessary, please consider this letter to be a second request for a rehearing and to reopen the application hearing.

I understand that the question of whether to reopen this matter has been placed on the Tuesday March, 21, 2023 agenda of the DRB. My client is unable to attend the meeting due to another previously scheduled engagement.

It is our position that this case must be reopened for review. As you are well aware, 24 V.S.A § 4464 provides in pertinent part:

- (a) Notice procedures. All development review applications before an appropriate municipal panel under procedures set forth in this chapter shall require notice as follows.
 - (1) A warned public hearing shall be required for conditional use review, variances, administrative officer appeals, and final plat review for subdivisions. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all the following:
 - (A) Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality affected.
 - (B) Posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2), including posting within view from the public right-of-way most nearly adjacent to the property for which an application is made.

(C) Written notification to the applicant and to owners of all properties adjoining the property subject to development, . . . The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

As you also know, participation in a municipal land use proceeding is a prerequisite to appealing a decision of a municipal land use board. In re Verizon Wireless Barton Permit, 2010 VT 62, ¶7, 188 Vt. 262, 267-268. Participation would require the party to testify or submit evidence, either written or oral, related to the subject matter of the proceeding. Id. at 268. However, 10 V.S.A. § 8504(b)(2)(A), (C) provides that an interested person may appeal from a municipal regulatory proceeding without having participated if a procedural defect prevented participation or manifest injustice would result. Id. at 269. That would surely be the case here, if this Board does not reopen this matter. Ms. Ferro would suffer manifest injustice because she was denied participation in the matter before the board. However, even if there is a possible path to appeal in this case, it seems prudent to allow both Ms. Ferro and others the simple opportunity to be heard. This is particularly true as this mistake is through no fault of Ms. Ferro or any property owner.

I understand that this DRB has seemed willing to reconsider this matter and reopen the hearing to consider neighbors' testimony and evidence. We believe that this is clearly the correct path forward, given the facts of this case. We appreciate the consideration and opportunity to be heard. As you know, due process is fundamental and central to any judicial or quasi-judicial process such as this and grounds the community's trust in its boards.

Accordingly, Ms. Ferro requests that this DRB grant her motion to reopen the matter and reschedule the hearing and we appreciate your consideration.

Sincerely,

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