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**DEPARTMENT OF
PLANNING & ZONING**

May 14, 2014

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City of Burlington
Development Review Board
c/o Nic Anderson
149 Church Street, City Hall
Burlington, VT 05401

Re: Zoning Complaint #267249
85 Crescent Road – Boarding House Use Appeal

Dear Ladies and Gentleman of the Board:

This firm represents Mr. Frederick Tiballi in his appeal of the March 12, 2014 Code Enforcement Office decision in the above-referenced matter. Please allow this letter to serve as our position statement for the May 20, 2014 hearing before you.

Mr. Tiballi owns property located at 20 Crescent Terrace in the City of Burlington, Vermont. On or about November 25, 2013, Mr. Tiballi filed a complaint with the City regarding property owned by Sherrill Musty located at 85 Crescent Road (the "property"). On March 12, 2014, the Code Enforcement Office ("CEO") issued a decision finding that Mr. Tiballi's complaints were unsubstantiated because no enforceable zoning violations existed on the property. Mr. Tiballi appealed the CEO's decision on or about March 25, 2014.

As discussed below, enforceable zoning violations do exist on the property. The property is located in the RL District. See City of Burlington, VT Comprehensive Development Ordinance (the "Ordinance"), Map 4.4.5-1. Boarding houses are conditional uses in that District. Ordinance, Appendix A. In approving a conditional use, the DRB may, among other things, "attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations." Ordinance § 3.5.6. Moreover:

Any and all plans and documents pertaining to a request for Conditional Use and/or Major Impact Review as approved by the DRB along with the Findings of Fact issued, shall be incorporated into any permit issued, and except as otherwise provided, all development shall occur strictly in accordance with such approved plans, applications, findings, and conditions."

Ordinance § 3.5.7 (emphasis added).

On November 14, 2006, the City of Burlington DRB (the “DRB”) issued Minutes/Findings of Fact granting “certificate of appropriateness approval” with pre-release conditions for Ms. Musty’s proposed three-room boarding house use on her property (the “three-room certificate of appropriateness”).¹ With that approval, the DRB imposed three conditions, one of which required:

Prior to release of the zoning permit, a revised site plan shall be submitted subject to staff review and approval. The revised site plan shall be of professional quality and detailed in order to accurately determine the proposal, and to scale (with the scale noted on the plan). Exact dimensions of the proposed parking spot shall be clearly noted on the site plan, and any changes to grade are to be depicted. Furthermore, all existing trees of more than 2” caliper shall be depicted and noted if they are to be removed. Finally, the access from the new parking spot to the house shall be depicted and described.”

Minutes/Findings of Fact, at 2-3 (emphasis added). Also on November 14, 2006, the City issued “Zoning Permit – COA Level I – Conditions of Approval.” The Conditions of Approval contained the same condition described above.

On December 17, 2008, the DRB issued Minutes/Findings of Fact granting conditional use approval to amend the three-room certificate of appropriateness based on Ms. Musty’s request to change the scope of use of her property from a three-room boarding house to a two-room boarding house. Ms. Musty’s request did not come in the form of a new permit application, but instead as a permit amendment application, meaning that the original conditions contained in the three-room certificate of appropriateness were not eliminated or dispensed with. Instead, in the case of a permit amendment, the original conditions of a permit still apply and only the portions of the permit that were amended are changed. Therefore, the original condition discussed above (which remains unmet) still applied to Ms. Musty’s amendment application for a two-room boarding house.

The original condition remains unmet because at no time since November 14, 2006 has Ms. Musty submitted a revised site plan for DRB staff review and approval pursuant to the condition set forth in the three-room certificate of appropriateness. Thus, Ms. Musty has not complied with the condition requiring her to submit such a site plan prior to release of a zoning permit. Ms. Musty, therefore, does not have an existing final zoning permit for her boarding house use.² Because no final zoning permit existed

¹ In 2006, boarding houses were not subject to conditional use review.

² The November 14, 2006 Findings themselves also reflect that the three-bedroom use was never fully approved. In listing the previous zoning actions for 85 Crescent Road, the DRB stated, “11/14/06, Approval of 3-room boarding house (permit not yet released).” Minutes/Findings of Fact, at 1 (emphasis added).



for the three-bedroom use (as the conditions were never met), no amendment to a final permit was possible. Ms. Musty's December 17, 2008 request for approval for a two-bedroom boarding house use is, therefore, also contingent upon the satisfaction of the original certificate of appropriateness conditions, which have not yet been satisfied, and no final permit exists. Ms. Musty is therefore violating the Ordinance by continuing her boarding house use, as that boarding house use is not yet properly permitted.

Accordingly, Ms. Musty must reapply for approval of her two-bedroom boarding house use so that a valid zoning permit is issued, or meet the pre-release condition of providing a compliant revised site plan for staff review and approval.

Should you have any questions, please feel free to contact me.

Sincerely,

Monaghan Safar Ducham PLLC

A handwritten signature in blue ink that reads "Courtney Butler".

Claudine C. Safar, Esq.
Courtney E. Butler, Esq.

Cc: Client