

**Department of Buildings and General Services**

Design and Construction Division
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Agency of Administration

Dear Zoning Administrator Bishop and Attorney Rugh:

On behalf of the State of Vermont, I write to respectfully request the February 8 zoning determination letter related to the Waterbury Armory Building at 294 Armory Drive, Waterbury, Vermont (“the Building”) be withdrawn without the need for an appeal hearing. The State maintains that the Building is currently operated and will remain operating under a government use designation under the Town and Village of Waterbury Zoning Regulations, as amended through May 16, 2016 (“the Regulations”). As such, the State requests the February 8 determination letter be withdrawn to avoid the unnecessary expense of potentially litigating the change-of-use issue.

The State of Vermont has owned the Building since June 23, 1955. The Building is located in the Village Residential district and it is currently operated as a government use under the Regulations. The Regulations define government use as all uses, other than those specified herein, operated directly by the federal government, the state, or a municipality. Regulations, Article XIV, Section 1400. The Building has been operated and used by the Vermont Military Department. The State is considering several uses for the Building such as relocating State Surplus, and State Print and Postal. At this point however, there have been no final space allocation decisions made.

The February 8 determination letter opines that because the proposed emergency shelter will be directly operated by a third party or vendor, it will not be “directly operated” by the State, and therefore requires a change of use permit as well as filing a conditional use and site plan application. However, it is unclear as to what facts this decision has been based upon. The Department of Buildings and General Services (“BGS”) has not submitted an application detailing the proposed specifics of the project. “The zoning administrator and ZBA can act only in response to an application that describes the project to be permitted.” *In re Appeal of Buildings and General Services*, 2003 VT 92, ¶ 21. The determination references an email dated February 5, 2024, from Commissioner Fitch to Municipal Manager Tom Leitz whereby Commissioner Fitch answered several questions previously posed by Manager Leitz. Regarding a question about water and sewer allocation amounts, Commissioner Fitch indicated that “the Department of Children and Families *would like* to have up to 40 beds for short-term temporary housing managed by onsite service providers.” (emphasis added) This should not be read as a definitive statement that a third party or vendor would operate the program. The BGS



Commissioner was trying to foster an open dialogue with the Town Manager regarding the potential project, not committing to actual programmatic specifics.

The State cannot leave the Determination unappealed as doing so renders a broad and ambiguous zoning determination final and unassailable pursuant to 24 V.S.A. § 4472. Without a plan it is difficult to say what constitutes a facility “directly operated” by the State and what does not. For example, a facility might still be considered “directly operated” by the State if ancillary services, such as janitorial services, were contracted out but the core governmental function of the facility was performed by State employees. The State has not submitted an application nor finalized a plan that would require a determination at this point and leaving the prior determination final and binding without a clear set of facts poses a risk to the State’s ability to argue that some future plan does or does not require a permit.

To avoid having to litigate over the scope and validity of the zoning determination, I respectfully request that the February 8 determination be withdrawn, and all parties are left to evaluate the need for any particular permit or approval once the State has made plans to use the building. The State will certainly share any such plans with the Town and the public. I am happy to discuss further as would be helpful to resolve this matter.

Sincerely,

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