

**State of Vermont
Superior Court – Environmental Division**

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ENTRY REGARDING MOTION

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In re Smith Building Permit
(Zoning Board of Adjustment Decision)

Docket No. 208-12-10 Vtec

Title: Motion for Subpoena Duces Tecum (Filing No. 13)

Filed: September 12, 2012

Filed By: Applicant/ Appellants William and Rosemary Smith

No Response filed

X Granted Denied Other

William and Rosemary Smith (“Applicants”) have appealed the Town of Concord Zoning Board of Adjustment’s (“the ZBA”) decision denying them a second permit to complete their building of a 30-foot by 50-foot garage on property they own in the Town of Concord, Vermont. Their original building permit expired. In preparation for the merits hearing, Applicants filed a request that the Court issue a subpoena duces tecum that Appellants will thereafter need to make the necessary arrangements to have served on the FEMA Map Assistance Management Agency in Elkridge, MD.

Rule 26(b)(1) of the Vermont Rules of Civil Procedure dictates that parties may obtain all evidence that is reasonably calculated to lead to the discovery of admissible evidence. The documents Applicants request are admissible under Rules 803(8) and 1005 of the Vermont Rules of Evidence, which, taken together, deem copies of records and reports kept by a public agency in its ordinary course of business admissible at trial. Accordingly, we **GRANT** Applicants’ request for a subpoena duces tecum.

Although we have granted Applicants’ request, because the FEMA office from which Applicants request documents is in Maryland, there are procedural hurdles that they must overcome in order to serve their request and obtain the documents. Under V.R.C.P. 45(a)(3), the party requesting the subpoena is responsible for serving the subpoena and, under V.R.C.P. 45(b)(2), subpoenas issued by this Court must be served in Vermont. Both Vermont and Maryland, however, have adopted a version of the Uniform Interstate Depositions and Discovery Act, which allows a local court to reissue a subpoena if an out-of-state subpoena is filed with the local court clerk. See V.R.C.P. 45(f); Md. Code Ann., Cts. & Jud. Proc. §9-402. We **GRANT** Applicant’s request, but we strongly encourage Applicants to retain counsel to assist them in in serving the subpoena and procuring the requested documents from FEMA.

Thomas S. Durkin, Judge

September 18, 2012
Date

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Date copies sent: _____ Clerk's Initials: _____

Copies sent to:
William and Rosemary Smith, Applicants/Appellants, pro se
Thomas R. Paul, Attorney for Appellee Town of Concord