

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 23-ENV-00133

Brownell & LaMarche Administrative Permit

MERITS DECISION

This is an appeal of a Town of Williston Development Review Board (DRB) decision dated October 25, 2023, denying Craig Sampson’s (Appellant) appeal of Administrative Permit 24-0016 (the Administrative Permit) issued to Randee Brownell and Jo LaMarche (Applicants) for the repositioning of Rosewood Drive, a shared private driveway located off Vermont Route 116 in Williston, Vermont. The Administrative Permit was issued to accommodate a modification to Discretionary Permit 19-03 (the Discretionary Permit) which was approved by this Court on April 15, 2022. In re Brownell/LaMarche Discretionary Permit, No. 20-ENV-00015 (Vt. Super. Ct. Envtl. Div. April 15, 2022) (Walsh, J.).

The Court and parties conducted a one-day merits hearing on May 14, 2024 via the WebEx platform. The Court then afforded the parties the opportunity to submit post-trial proposed findings of fact and conclusions of law by May 31, 2024.¹

Appellant is represented by Attorney Adam H. Miller. Applicants are represented by Attorney Brian P. Hehir. Interested parties Claire and James Beecher also appeared in this matter and are self-represented. The Town of Williston appeared through its attorney David W. Rugh but did not participate in the trial.

Statement of Questions

Appellant filed a three-Question Statement of Questions on December 13, 2023. Later, on March 8, 2024, Appellant moved to add a fourth Question which was granted on the record

¹ At trial, Applicant’s attorney requested the opportunity to submit post-trial filings. However, only Appellant’s attorney filed a post-trial memorandum.

at a May 1 pre-trial status conference. In his post-trial brief, Appellant indicated that he is no longer pursuing Questions 2 and 3.² Accordingly, those two Questions are dismissed, leaving the following two Questions presented for a final determination:

(1) Does the application for AP-24-0016 satisfy the Access requirements of WDB Chapter 13, including the standards for the construction of residential driveways in Section 13.2.6?

(4) Should application AP-24-0106 be rejected based on a material misrepresentation pursuant to 24 V.S.A. §4470a, because AP-24-0016 proposes required safety improvements to lands Applicants claim to own but that this Court held does not belong to the [Applicant] in *Beecher v. Brownell*, No. 23-CV-03459 (Vt. Super. Ct. Civ. Div. January 31, 2024) (Walsh, J.).

Statement of Questions (filed December 13, 2023; amended on May 1, 2024).

Findings of Fact

1. In or around 2018, Applicants Randee Brownell and Jo LaMarche applied for a discretionary permit for a 4-lot subdivision of a 51.3-acre parcel of land located at 4354 South Brownell Road in Williston, Vermont (the Property).

2. The Property currently has an existing single-family dwelling.

3. Applicants seek to create a separate parcel for the existing dwelling, as well as two additional lots for single-family residential use and an open space lot.

4. Two of the proposed dwellings are to be accessed via Rosewood Drive, a shared private driveway located off Vermont Route 116.

5. Rosewood Drive currently serves three existing residential dwellings, not including the two lots proposed for residential development.

6. Appellant Craig Sampson owns and resides on one of the properties located off Rosewood Drive.

7. Interested parties Claire and James Beecher own and reside at 4987 Route 116, Williston, Vermont, which is adjacent to a portion of Rosewood Drive but is not accessed thereby.

² We received no opposition to the dismissal of Questions 2 and 3 from the Beechers.

8. During proceedings before the Williston Development Review Board (DRB) for a discretionary permit, Appellant argued that the traveled portion of Rosewood Drive was approximately 18 feet from his private domestic drinking water well in violation of State Wastewater System and Potable Water Supply Rules.

9. The DRB issued Discretionary Permit 19-03 (previously defined as the Discretionary Permit) on September 22, 2020.

10. The DRB's decision found that the Sampson well did not meet the minimum isolation distance for drinking water wells as set forth in the relevant State rules. Despite this finding, the DRB concluded that the well's location was an existing nonconformity and did not impose a condition to relocate any part of Rosewood Drive.

11. Appellant subsequently appealed the DRB's decision to this Court, which issued a final decision on April 15, 2022 approving the Discretionary Permit with conditions. In re Brownell/LaMarche Discretionary Permit, No. 20-ENV-00015 (Vt. Super. Ct. Envtl. Div. April 15, 2022) (Walsh, J.).

12. As a condition of approval, the Court ordered that Rosewood Drive be relocated to be at least twenty-five feet from the Sampson well at the expense and responsibility of the Applicants.

13. The Court's decision was never appealed and is therefore final and binding on all parties.

14. In response to the Court's decision, Applicants applied for and received administrative permit 24-0016 (previously defined as the Administrative Permit).

15. The Administrative Permit was issued for the repositioning of Rosewood Drive to accommodate the 25-foot buffer from the Sampson's well.

16. In their application for the Administrative Permit, Applicants filed a site plan which identified the location of the Beecher – Brownell/LaMarche property line as approximately seven feet from the proposed relocated portion of Rosewood Drive.

17. On October 14, 2023, the Beechers initiated a lawsuit in Chittenden Civil Court against Applicants relating to a boundary dispute over the area between Rosewood Drive and the Beecher – Brownell/LaMarche property line.

18. That matter was resolved in a stipulated Judgment Order issued on January 31, 2024. Beecher v. Brownell, No. 23-CV-03459 (Vt. Super. Ct. Jan. 31, 2024) (Walsh, J.).

19. Applicants filed a revised site plan with this Court which accurately depicts the location of the Beecher – Brownell/LaMarche property line. Applicant’s Ex. A.

Discussion

As a preliminary matter, we must address a jurisdictional issue relating to the scope of this appeal and the Questions presented. This Court’s jurisdiction is defined by the Statement of Questions. In re LaBerge NOV, 2016 VT 99, ¶ 15, 203 Vt. 98; V.R.E.C.P. 5(f). An appellant “may not raise any question on the appeal not presented in the statement as filed.” V.R.E.C.P. 5(f). The Court may consider matters that are intrinsic to the statement of questions, even if they are not literally stated. Id. (citing In re Jolley Assocs., 2006 VT 132, ¶ 9, 181 Vt. 190). However, the Questions must provide enough specificity to notify the opposing party and this Court of the issues being raised. In re Atwood Planned Unit Development, 2017 VT 16, ¶ 14, 204 Vt. 301 (citation omitted). With this jurisdictional rule in mind, we conclude that Appellant has presented arguments to the Court which were not raised in the Statement of Questions—specifically, whether the Administrative Permit complies with the terms and conditions of the Discretionary Permit.

Appellant’s Question 1 asks whether the proposed project satisfies the access requirements of the Williston Development Bylaws (WDB) Chapter 13, including the standards for construction of residential driveways in WDB § 13.2.6. Appellant’s Question 4 asks whether the application makes a material misrepresentation pursuant to 24 V.S.A. § 4470(a) because it proposes improvements to lands that Applicants do not own. Despite the narrow scope of these two Questions, Appellant argues other topics which were not raised in the Statement of Questions. Specifically, Appellant argues that the Administrative Permit should be rejected because it does not comply with the terms of the Discretionary Permit and its conditions of approval. In making this argument, Appellant cites to WDB § 5.2.2.1–2 which require the Zoning Administrator to review a proposed development for compliance with conditions of approval in any other applicable permits. These references to WDB § 5.2.2 and the Administrative Permit’s compliance with the terms of the Discretionary Permit are not inherent to the two Questions presented to the Court. Accordingly, we conclude that we do not have jurisdiction to consider

whether the Administrative Permit complies with the conditions of approval in the Discretionary Permit or any other provision in the WDB, except for Chapter 13.

We now turn to WDB Chapter 13, which pertains to traffic impacts and access requirements. Applicant's Question 1 asks generally whether the Administrative Permit complies with the requirements of Chapter 13, specifically the standards for residential driveway access in WDB § 13.2.6.

When interpreting a zoning ordinance, we apply the principles of statutory construction. In re Confluence Behavioral Health, LLC, 2017 VT 112, ¶ 17, 206 Vt. 302. The primary goal in interpreting a zoning ordinance is to give effect to the legislative intent. Id. at ¶ 20. We "construe an ordinance's words according to their plain and ordinary meaning, giving effect to the whole and every part of the ordinance." Id. (citing In re Laberge Moto-Cross Track, 2011 VT 1, ¶ 8, 189 Vt. 578). Based on the plain meaning of Chapter 13, we conclude that WDB § 13.2.6 does not apply to the proposed driveway relocation.

WDB § 13.2.6 contains standards for the construction of residential driveways. Of these standards, Appellant points to § 13.2.6.2, which provides that "[w]here the drive travels through brush, woods, or forest, there shall be a cleared area of four feet on either side of the drive." WDB § 13.2.6.2. However, the Administrative Permit only allows for a 2.7-foot clear area between the western traveled portion of Rosewood Drive and the Beecher – Brownell/LaMarche property line. Appellant also argues that the Administrative Permit fails to provide ditching or drainage as required by WDB § 13.2.6.4.

In response, Applicants point to WDB § 13.5.1.1 to suggest that the standards in § 13.2.6 do not apply. WDB § 13.5.1.1, which applies to existing driveways, states in relevant part:

Where an existing private driveway serves more than five (5) parcels, and offers the only access to one or more undeveloped parcels, it may serve one dwelling per parcel, but must be upgraded to meet the standards of WDB 13.2.6 before a sixth dwelling is permitted.

Section 13.5.1.1 explains that for an existing private driveway serving five or fewer dwellings, the requirements of WDB § 13.2.6 do not apply. Only when an existing private driveway serves a sixth dwelling, do the requirements of WDB § 13.2.6 apply. It is undisputed

that Rosewood Drive currently serves three existing residential dwellings, and that Applicants propose adding two residential dwellings which will be served by Rosewood Drive. Of the remaining two lots proposed, one will contain Applicant's residence, which is accessed via South Brownell Road, and one will remain undeveloped and shall be preserved as open space. Accordingly, of the parcels served by Rosewood Drive, only five will contain dwellings under the current proposal. Because Rosewood Drive is an existing driveway serving only five parcels with residential dwellings, we conclude that Applicant's proposed project satisfies the requirements of WDB § 13.5.1.1 and is therefore not subject to the requirements of WDB § 13.2.6.

Next, we turn to Appellant's Question 4, which asks whether the Administrative Permit should be rejected because it is based on a material misrepresentation. Appellant cites to 24 V.S.A. § 4470a which states that "[a]n administrative officer . . . may reject an application . . . that materially misrepresents any material fact." 24 V.S.A. § 4470a. Specifically, Appellant points to the site plan attached with the application, which misrepresents the location of the Beecher – Brownell and LaMarche property line. This Question misconstrues the fundamental nature of our de novo review, which requires us to consider the application and evidence anew. 24 V.S.A. § 4472; Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989). This Court may consider new evidence, such as a revised site plan, so long as it does not involve "substantial changes to the form or type of an application" and "do[es] not materially change the pending application or type of permit requested." In re Wright & Boester Conditional Use Application, 2021 VT 80, ¶ 22, 215 Vt. 593 (quoting In re Sisters & Bros. Inv. Grp., LLP, 2009 VT 58, ¶ 21, 186 Vt. 103). Here, it is undisputed that Applicants submitted to the Court a revised site plan which accurately depicts the location of the Beecher – Brownell/LaMarche property line. Accordingly, there is no misrepresentation of fact in the application that would require the Court to reject the Administrative Permit pursuant to 24 V.S.A. § 4470a. We therefore answer Question 4 in the negative.

To the extent that, through Question 4, Appellant seeks to challenge the Administrative Permit's compliance with the terms and conditions of the Discretionary Permit, those issues are outside the scope of this Question. Question 4 merely asks whether the application made a material misrepresentation pursuant to 24 V.S.A. § 4470a. However, in arguing that the

Administrative Permit should be rejected, Appellant suggests that the application does not comply with certain terms in the Discretionary Permit, in violation of WDB § 5.2.2.1–2. Question 4 neither explicitly nor implicitly raises issues relating to compliance with the Discretionary Permit. This Question fails to put the Applicants and this Court on notice of the substantive arguments relating to WDB § 5.2.2 and the terms and conditions of the Discretionary Permit. Accordingly, we conclude that those arguments are outside of this Court’s subject matter jurisdiction.

Conclusion

For the foregoing reasons, we conclude that the Administrative Permit satisfies the relevant requirements of WDB Chapter 13 and that the alleged misrepresentation of the Beecher – Brownell/LaMarche property line has been cured on appeal. Accordingly, we **AFFIRM** the Administrative Permit as issued. This concludes the matter before the Court. A Judgment Order accompanies this Decision.

Electronically signed June 14, 2024 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division