

STATE OF VERMONT

ENVIRONMENTAL COURT

	}	
In re: Northfield Engine House Renovation	}	Docket No. 119-6-08 Vtec
(Appeal of Drown)	}	
	}	

Decision and Order on Pending Motions

Appellant Larry Drown appealed from a decision of the Zoning Board of Adjustment (ZBA) of the Town of Northfield, granting conditional use approval to Appellee-Applicant R.H. Associates & Company to renovate an existing building in the Industrial zoning district, the Northfield Engine House, for use as offices, warehouse, and limited retail space. Appellant has appeared and represents himself; Appellees R.H. Associates & Co., Martha Mahan and Glenn Howland are represented by Liam L. Murphy, Esq. and Pamela Moreau, Esq.; the Town is represented by Joseph S. McLean, Esq.; and Interested Persons G. Peter D’Amico and Kathleen D’Amico have entered their appearances and represent themselves.

Appellant Larry Drown owns property to the south of the project property and expressed concerns at the ZBA hearing regarding a right-of-way over the project property that provides access to his property, and expressed concerns regarding stormwater runoff. His original Statement of Questions raised seven questions which did not link his concerns to any specific sections of the Zoning Regulations. Applicant moved to dismiss or clarify the Statement of Questions.

At the initial pretrial conference held in person on the record at the Environmental Court, Judge Durkin dismissed Questions 5 and 7 of the initial Statement of Questions. On September 8, 2008, in response to Applicant’s motion to dismiss or clarify, Appellant moved to amend and to clarify and filed an amended

Statement of Questions in place of the original Statement of Questions. Appellant characterized the amended Statement of Questions as his “complaint,” consisting of 32 questions, which he characterized as “for defendant[s] to answer.” In response to this filing, Applicant filed a further memo in support of its motion to dismiss or, in the alternative, to clarify the new Statement of Questions.

First, it is necessary to make clear that the Statement of Questions is not a “complaint” and need not be answered by the applicant; neither is the applicant a “defendant.” Rather, the Statement of Questions is required to set out what issues the Appellant wants the Court to determine in this appeal.

Applicant’s motion to dismiss the amended Statement of Questions as an impermissible expansion of the issues raised in the original Statement of Questions is DENIED; Appellant’s motion for leave to file the amended Statement of Questions, styled as a Motion to Clarify and a Motion to Amend, is GRANTED. After receiving the explanation given by Judge Durkin at the September 2, 2008 in-person conference, Appellant was entitled to attempt to bring his Statement of Questions within the requirements of V.R.E.C.P. 5(f). We turn to the motion to dismiss or clarify the questions as beyond the scope of this proceeding.

All that is before the Court in this appeal is the conditional use application that was before the ZBA for decision. The Court is acting de novo in this appeal, deciding whether to grant or deny the conditional use application, in place of the ZBA, but only on the issues properly within the conditional use standards found in § 208 of the Zoning Regulations and properly raised in the Statement of Questions.

Even the amended Statement of Questions raises no issues as to whether the project has an undue adverse effect on the conditional use standards stated in § 208(1), (2), (3), or (5). Therefore the thirty-two questions will be examined to determine if they

raise issues as to the other sections of the zoning ordinance or any other “bylaws in effect,” under the remaining conditional use standard in § 208(4).

Questions 1, 2, 3, 4, 5, 16, 17, 18, 19, 30, and 31

Questions 1, 2, 3, 4, 5, 16, 17, 18, 19, 30, and 31 raise issues as to the proposed and former uses of the property, and the area of the property and its buildings. They relate to how the property and use should be categorized under the zoning ordinance, and whether it meets the requirements of the zoning ordinance, and so should not be dismissed. However, all these questions appear to be able to be resolved easily on summary judgment. Indeed, as well as the information contained in the application, the business was described at the ZBA hearing as a business that supplies doors and hardware for industrial renovations.

A schedule for any motions for summary judgment on any of the questions not scheduled for dismissal appears in the final paragraph of this decision.

Question 6

Question 6 is stated in a form that calls for an impermissible advisory opinion of the Court, but in the context of the present appeal, it appears instead to be asking a legal question necessary to dispose of Questions 7 and 8 as to whether the proposal requires site plan approval. It may only reflect the imprecise use of the term “permitted” to refer to use categories classified as “conditional” uses in the zoning ordinance, suggesting that any uses proposed for the renovated building that fall within any conditional use categories remain classified as “conditional uses” if they are granted conditional use approval by the ZBA or by this Court on appeal. Accordingly, Question 6 remains in the appeal but is suitable to be resolved on summary judgment. A schedule for any motions for summary judgment on any of the questions not scheduled for dismissal appears in the final paragraph of this decision.

Questions 7, 8, 9, 20, 21, 22, 23, 24, 25, and 26

The issue of whether the project also needs site plan approval from the Planning Commission is within the scope of this appeal; however, questions as to whether Applicant has applied for or received site plan approval, and questions as to the merits of parking and utility layout and other issues considered in site plan approval are not before the Court in this appeal from the ZBA's conditional use decision. Accordingly, to the extent that Questions 7 and 8 ask whether the proposal also requires site plan approval, that question remains in this appeal. Otherwise, the remainder of Questions 7 and 8, as well as Questions 9, 20, 21, 22, 23, 24, 25, and 26, will be dismissed on the schedule set out in the final paragraph of this decision.

Questions 10, 11, 27, and 28

The building or zoning permit application shows that it was issued on June 10, 2008, to become effective after the fifteen-day appeal period was to expire on June 25, 2008. Its issuance was not appealed to the ZBA, and therefore it became final and cannot be challenged, either directly or indirectly. 24 V.S.A. § 4472(d). Accordingly, Questions 10, 11, 27, and 28 are hereby DISMISSED.

Questions 12, 13, 14, 15

The sketch plan attached to the building or zoning permit application shows the project property size as 10.34 acres, in a zoning district in which the minimum lot size is a half acre. Accordingly, if any portion of the property was formerly an existing small lot, such treatment is not now being claimed. As the sketch plan was part of the permit issued by the Zoning Administrator on June 10, 2008, and not appealed, it also cannot now be challenged. Accordingly, Questions 12, 13, 14, and 15 are hereby DISMISSED.

Questions 29 and 32

Question 29 raises the question of whether the building proposed for renovation is a non-complying structure; if it is, Question 32 raises issues as to how it should be treated under the provisions of the zoning ordinance dealing with non-complying structures and non-conforming uses.

The unappealed sketch plan shows the building's setbacks, which appear to comply with § 705. If Appellant claims that the building is non-complying in any other respect, he shall restate Question 29 to specifically state the non-compliance he alleges to exist, otherwise Questions 29 and 32 will be dismissed on the schedule set out in the final paragraph of this decision.

Therefore, Questions 10, 11, 12, 13, 14, 15, 27, and 28 are hereby DISMISSED, as discussed above. Any party wishing to file any further memorandum arguing why the remainder of Questions 7 and 8, as well as Questions 9, 20, 21, 22, 23, 24, 25, 26, 29 and 32, should or should not be dismissed, as discussed above, may file such a memorandum so that it is received at the Court on or before December 5, 2008. An order addressing those questions will issue on December 9, 2008. Any motions for summary judgment as to any questions not dismissed may be filed on or before December 17, 2008; any responses shall be filed on or before January 5, 2009.

Done at Berlin, Vermont, this 14th day of November, 2008.

Merideth Wright
Environmental Judge