

STATE OF VERMONT
ENVIRONMENTAL COURT

In re: Appeal of
Bruce Murray, et al.

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Docket No. 173-9-99 Vtec

Decision and Order on Motion for Partial Summary Judgment

Appellants appealed from a decision of the Zoning Board of Adjustment (ZBA) of the Town of Bradford granting a conditional use permit to Philip Boudreau. Appellants represent themselves; Appellee-Applicant Philip Boudreau represents himself; the Town has entered an appearance through its Town Agent, Craig White, who is not an attorney; and Earl Welch has entered an appearance in his own behalf as an interested party in support of Appellee-Applicant. Appellants have moved for partial summary judgment on Question 1 of the Statement of Questions: whether a motor vehicle inspection station can be considered at all for approval as a conditional use in the Residential zoning district.

Appellee-Applicant's property is located in the Residential zoning district. Appellants argue that the specific uses of "motor vehicle sales and service" and "gasoline service stations" are explicitly allowed in the Commercial zoning district only, and therefore should not be considered as a possible conditional use in the Residential zoning district. However, the following category of conditionally-permitted uses is allowed in the Residential zoning district if approved under the conditional use standards: "enterprises employing no more than four persons including owners and operator and where the nature of the business and the lot size involved will not change the character of a residential neighborhood." As this category is available in the Zoning Regulations, Appellee-Applicant is entitled to present evidence as to whether he can qualify for a permit under this section.

Appellants also argue that the nature of Appellee-Applicant's proposed auto inspection business will change the character of their neighborhood. However, material facts are in dispute on this question. Appellee-Applicant is entitled to present evidence to

show that his proposed project will not change the character of the neighborhood, and that it will meet the other conditional use standards for approval.

Accordingly, based on the foregoing, Appellants' Motion for Summary Judgment is DENIED: an application for a motor vehicle inspection station may be considered for approval in the Residential zoning district under the first category of conditionally-permitted uses: "enterprises employing no more than four persons including owners and operator and where the nature of the business and the lot size involved will not change the character of a residential neighborhood."

This matter will proceed to trial as scheduled on Wednesday, April 12, 2000, in Chelsea, on the merits of that application. Because all the parties are unrepresented by counsel, the Court notes for the parties' guidance that because this is a de novo proceeding, the burden is on Appellee-Applicant first to show that the nature of his proposed business and the lot size involved will not change the character of the residential neighborhood, and then to show that it meets the standards for conditional use approval found in Article IV of the Zoning Ordinance.

Done at Barre, Vermont, this 5th day of April, 2000.

Merideth Wright
Environmental Judge