

A number of other issues have been referred to in the minutes of the ZBA meetings or in the parties' filings, but do not appear to be before the Court in this appeal. If the proposal requires any sort of approval for the addition of a new bathroom under the Town's septic ordinance, separately from the zoning ordinance, that issue does not appear to be before the Court. If earlier renovations of the kitchen, the garage, or the screened-in porch should have been the subject of other zoning applications, it is up to the Town to determine whether to take any enforcement action or whether the statute of limitations for such enforcement action has expired.

In addition, if the McLaughlins and the Keoughs wish to have a court rule on the existence or effect of any private covenants limiting the height of the houses in that area, they will have to raise those questions in an action in Superior Court. They may wish to consult with an attorney to more fully understand these issues or the rights they may have acquired through their property deeds. This Court in this appeal sits in place of the ZBA to rule on the application before it, which in this case is the Keoughs' appeal of the Zoning Administrator's denial of their application. The ZBA does not have jurisdiction of private property rights such as a covenant regarding height, and therefore neither does this Court.

Accordingly, based on the foregoing, it is hereby ORDERED and ADJUDGED that Appellants' Motion for Summary Judgment is DENIED.

This appeal will be set for trial on the merits at the Rutland District Court, which is handicapped-accessible. Please advise the Court as to any dates that are unavailable for the parties or their witnesses from May 15 through June 26. Also please advise the Court if Ms. McLaughlin is unable to travel to the courthouse, in which case we will have to determine whether we need to arrange to take her testimony by telephone on the day of the hearing.

Done at Barre, Vermont, this 11th day of March, 2003.

Merideth Wright
Environmental Judge

Footnotes

¹ The zoning ordinance was not supplied to the Court with the motion.