

"[w]ithin thirty days of the date of the act or decision." Id. 10 V.S.A. § 8504(b)(2), however, proscribes circumstances in which the thirty day filing deadline may be overcome. 10 V.S.A. § 8504(b)(2) states:

Notwithstanding subdivision (1) of this subsection, an interested person may appeal an act or decision under 24 V.S.A. chapter 117 if the environmental judge determines that:

(A) there was a procedural defect which prevented the person from obtaining interested person status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of interested person status.; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

Id.

CNB owns property which is across the street from the buildings which Applicant seeks authority to demolish. No party disputes that CNB is regarded as an adjoiner, thereby entitled to written notice of the ZBA's hearing on the pending application. See 24 V.S.A. § 4464(a)(1)(C) (directing that written notification of the public hearing on a specific application must be given to "owners of all properties adjoining the property subject to development, including the owners of properties which would be contiguous . . . but for the interposition of a highway or other public right-of-way . . ."). No such notice was given to CNB, however, which CNB asserts is the only reason why it did not participate or file a timely appeal in this matter.² In fact, the record before us suggests that the ZBA did not give notice of its hearing to any adjoining property owner.

When notice is not provided, parties entitled to participate are deprived of their rights to participate and be heard. We envision that the absence of notice to adjoining property owners in this case is the very type of "procedural defect" that justifies an exception to our appeals process, since the absence of notice "prevented [CNB] from obtaining party status or participating in the {ZBA} proceeding." 10 V.S.A. § 8504(d)(2)(A). Contemplating that such "procedural defects" will sometimes occur in zoning proceedings, our law directs that an untimely appeal may be allowed to go forward. We conclude that the lack of notice, and CNB's effort to appeal upon learning of the ZBA's unnoticed decision, speaks in favor of allowing its appeal to go forward.

For all these reasons, we conclude that Main St. Place's summary judgment motion must be DENIED.

Thomas S. Durkin, Judge
February 12, 2010
Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:
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² The parties also do not dispute that CNB did not receive immediate notice of the ZBA decision.