

STATE OF VERMONT

SUPERIOR COURT
Vermont Unit

ENVIRONMENTAL DIVISION
Docket No. 86-6-14 Vtec

Mahan Conditional Use Application

JUDGMENT ORDER

The matter before the Court involves an application by Martha Mahan (Applicant) to convert a pre-existing, nonconforming commercial structure (the Structure) at 118 South Main Street in the Town of Northfield, Vermont (the Property) into offices for real estate management. The Town of Northfield Zoning Board of Adjustment (ZBA) denied the permit by decision dated May 22, 2014. Applicant appealed that decision to this Court and filed a Statement of Questions containing three questions. Both Applicant and neighboring landowners William P. Mayo, Mayo Properties, LLP, Michael C. Curtis, and Darlene R. Goodrich (the Neighbors) moved for summary judgment on Applicant's Question 1. The Town of Northfield (Town) filed a memorandum in opposition to Applicant's motion for summary judgment and in support of the Neighbors' motion for summary judgment. Ms. Mahan is represented by Christopher Roy, Esq. Neighbors are represented by L. Brooke Dingedine, Esq. The Town is represented by David W. Rugh, Esq.

Applicant's Question 1 asks whether the ZBA conclusively determined that the Structure's nonconforming use had been abandoned for a period greater than 12 months, as established under Bylaw § 4.06(B)(1), and whether the ZBA had issued a final decision on Applicant's October 1, 2013 application. Because the ZBA's minutes on the October 24 hearing, approved by the ZBA, serve as the final record of decision in the matter, Applicant's failure to appeal the ZBA's decision binds her to the decision and precludes her from contesting the decision or provisions therein. This includes the ZBA's conclusion that the Structure's nonconforming use has been abandoned. For this reason, we **DENY** Ms. Mahan's motion for summary judgment as to Question 1.

Although the Neighbors failed to demonstrate that they are entitled to a judgment as a matter of law, in our February 19, 2015 decision we notified the parties of our intent to grant summary judgment on Question 1 in the Neighbor's favor pursuant to V.R.C.P. 56(f)(2) on the alternate grounds argued by the Town. Also based on the finality of the ZBA's decision, we notified the parties of our intent to grant summary judgment on Questions 2 and 3 in the Neighbor's favor pursuant to V.R.C.P. 56(f)(3). The parties did not file in response to our February 19, 2015 decision. For the reasons set forth in our February 19 decision, we **GRANT** summary judgment in the Neighbor's favor on Questions 1, 2, and 3. The Town of Northfield Zoning Board of Adjustment's denial is therefore **AFFIRMED**.

This completes the current proceedings before the Court.

Electronically signed on April 08, 2015 at 04:19 PM pursuant to V.R.E.F. 7(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