

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-368

FEBRUARY TERM, 2005

In re Appeal of Paul and Margaret Irons } APPEALED FROM:
 } }
 } Environmental Court
 } }
 } DOCKET NO. 94-6-04 Vtec
 } Trial Judge: Merideth Wright

In the above-entitled cause, the Clerk will enter:

Appellants Paul and Margaret Irons challenge an order of the environmental court granting the City of Barre a conditional use permit for the construction of a new public safety building. We affirm.

The City of Barre received a conditional use permit from the City’s development review board (DRB) for construction of a new public safety building. The City proposed to locate the building between Fourth and Fifth Streets, one block east of North Main Street, in a planned residential zoning district. Appellants appealed the DRB’s decision to the environmental court, which conducted a de novo hearing.

At the environmental court, appellants contended that the DRB’s decision impaired their vested rights in parking along Fourth Street. They claimed that their property interest in parking on Fourth Street arose from a 1990 zoning permit they received. Appellants argued that the conditional use permit took their vested property rights from them unlawfully. In addition, appellants contested the City’s claim that the project met the conditional use criteria set forth in the City’s zoning ordinance. After performing a site visit with the parties and considering the evidence offered and admitted into the record, the environmental court concluded that the project met the requirement for conditional use so long as the City abided by the permit’s conditions. This appeal followed.

Appellants reassert their argument that the conditional use permit impaired their vested property rights in parking along the portion of Fourth Street that abuts their property. The City argues that we may not consider the issue because the environmental court did not decide it, concluding that it lacked subject matter jurisdiction over the question. Because the environmental court did not rule on the issue of appellants’ claim of vested rights, the only issue properly before us is whether the court correctly decided the jurisdictional question. Appellants do not provide an argument on that question, and this Court does not address issues that are not briefed. In re Dunnett, 172 Vt. 196, 203 n.* (2001). Therefore, we express no opinion on appellants’ claim of vested rights because it is not properly before us. See Fyles v. Schmidt, 141 Vt. 419, 422-23 (1982) (“Issues not ruled on by the trial court cannot be raised for the first time on appeal.”).

Appellants next argue that the environmental court’s findings and conclusions are contrary to the record evidence and that the court misapplied the law. We review the environmental court’s findings for clear error. Findings will stand on appeal if there is any credible evidence in the record to support them. In re Gulli, 174 Vt. 580, 582 (2002) (mem.). The court’s interpretation of a zoning ordinance will be upheld absent a showing that it is arbitrary, capricious, or based on an irrational reading of the law. In re Bennington Sch., Inc., 2004 VT 6, ¶ 11, 176 Vt. 584 (mem.).

Appellants claim that the court erred by concluding that the project will not adversely affect traffic in the area or the area’s character. In addition, appellants argue that community facilities along Fourth and Main Streets will be adversely affected by the new public safety facility. The court determined that traffic in the area will not be adversely affected by the new facility because Fourth Street is capable of handling the emergency traffic that will occur after the facility is built. As to the character of the area, the court found that the surrounding neighborhood contains a mix of residential and commercial uses, and that the aesthetics of the new building are attractive and compatible with the downtown Barre area. The court also found no adverse impact on appellants’ property and other facilities in the area from the project. Appellants have ample parking for their tenants even if no parking is permitted along Fourth Street. All of those findings and conclusions are well supported by the evidence in the record, and we find no arbitrary or capricious application of the law in this case. No error appears.

Finally, appellants contend that the proceedings below were tainted by the City’s conflict of interest in reviewing its own application for a conditional use permit. The City argues that appellants never raised this claim before the environmental court. Appellants have not demonstrated that they preserved this issue for our review by raising it before the environmental court. See V.R.A.P. 28(a)(4) (appellant’s brief must explain how issues were presented below and preserved for appellate review); New England P’ship v. Rutland City Sch. Dist., 173 Vt. 69, 73 (2001) (absent an indication that appellant’s argument was raised below, the matter may not be heard on appeal). We therefore do not consider the argument.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned