STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
Docket No. 3-1-19 Vtec
Docket No. 4-1-19 Vtec

Capitol Plaza 2-Lot Subdivision Capitol Plaza Major Site Plan	DECISION ON MOTIONS

Appellants, a group of 18 individuals, appeal two decisions of the City of Montpelier Development Review Board (DRB) relating to a parking garage (the Project) proposed by the City of Montpelier (the City). The City hopes to build the Project on part of a lot currently owned by the Capitol Plaza Corporation, and it plans to subdivide the lot in order to obtain ownership of the necessary land. The DRB approved the City's subdivision application along with the Major Site Plan for the Project's design.

Several motions are pending before the Court. This decision is limited to the City's "Motion for Summary Judgment on Interested Person Status" and the motion to intervene filed by two members of the appellant group. The City contends that 24 V.S.A. § 4465(b)(4), the statutory provision authorizing Appellants' "interested person" status, does not eliminate the requirements of the constitutional standing doctrine and that Appellants must be dismissed because they cannot meet those requirements. Appellants argue that the statute creates a cognizable "injury-in-fact" for constitutional standing purposes and, alternatively, that two members of their group have standing to maintain the appeal as individuals. Those two members, John Russell and Les Blomberg, seek to intervene if we dismiss the appellant group.

Factual Background

For the sole purpose of putting the motions into context, the Court recites the following facts, all of which we understand to be undisputed unless otherwise noted:

1. The proposed Project is to be located in Montpelier on two lots: one to be created by subdividing a parcel at 100 State Street and one leased at 60 State Street.

2. The DRB held public hearings on the City's subdivision and site plan applications on October 15, 2018, and November 5, 2018.
3. Appellants submitted signed petitions to the DRB under 24 V.S.A § 4465(b)(4), along with statements of concern.
4. Appellants alleged in their petitions that "the Applications and Projects, if approved, will not be in accord with policies, purposes, or terms of the City of Montpelier, Plan, or the Regulation."
5. John Russell owns properties in Montpelier, including property at 107 State Street with a parking lot located behind 105 State Street.
6. The only vehicle access to Mr. Russell's parking lot is through an entrance off State Street.
7. Mr. Russell routinely walks along State Street and nearby streets as he visits his Montpelier properties.
8. Les Blomberg works at 52 State Street in Montpelier.
9. Mr. Blomberg's office overlooks the Project site.
10. Mr. Blomberg often travels to work by bicycle or on foot and is a frequent downtown pedestrian and cyclist.

Motion for Summary Judgment on Interested Person Status

I. Whether Constitutional Standing Principles Apply

We begin by clarifying the first issue before the Court. To appeal a municipal planning or zoning decision, a party must have participated as an "interested person" in the municipal proceeding below. See 10 V.S.A. 8504(b)(1); 24 V.S.A. § 4471. Under 24 V.S.A. § 4465(b), the Legislature has provided five different definitions for "interested person" including a group of:

> Any ten persons who may be any combination of voters or real property owners within a municipality . . . who, by signed petition to the appropriate municipal panel of [the] municipality . . . allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.

24 V.S.A. § 4465(b)(4). It is undisputed that Appellants appeared before the DRB under the § 4465(b)(4) "group-of-ten" provision, and it appears that they currently meet the statutory requirements. Past decisions of this Court have stated that parties who meet the requirements in § 4465(b)(4) have "standing" to appeal. See, e.g., Burns 12 Weston Street NOV, No. 75-7-18 Vtec, slip op. at 3–4 (Vt. Super. Ct. Envtl. Div. April 5, 2019) (Durkin, J.). The question raised by the City, one of first impression in this context, is whether Appellants must also demonstrate their constitutional standing as a matter of justiciability. The answer is yes.

"The standing requirement originates in Article III of the United States Constitution, which states that federal courts have jurisdiction only over actual cases or controversies." Parker v. Town of Milton, 169 Vt. 74, 76–77 (1998). Vermont has adopted this principle, such that "Vermont Courts have subject matter jurisdiction only over actual cases or controversies involving litigants with adverse interests." Bischoff v. Bletz, 2008 VT 16, ¶ 15, 183 Vt. 235 (quotation omitted). As a key component of the case or controversy requirement, the standing doctrine ensures that a plaintiff suffers "the threat of actual injury to a protected legal interest." Town of Cavendish v. Vermont Pub. Power Supply Auth., 141 Vt. 144, 147 (1982). To show standing, plaintiffs have the burden of demonstrating "(1) injury in fact, (2) causation, and (3) redressability." Parker, 169 Vt. At 76–77; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (describing the three elements in detail). Most relevant here, plaintiffs must show a "particular injury" rather than "merely speculating about the impact of some generalized grievance." Parker, 169 Vt. At 77 (quotation omitted).

These core jurisdictional requirements are well known to this Court. We have recognized that "the Court does not have jurisdiction to adjudicate" cases where plaintiffs and intervenors have not established the minimum constitutional elements of standing. See, e.g., In re Diverging Diamond Interchange SW Permit, Nos. 50-6-16 and 169-12-16 Vtec, slip op. at 51–52 (Vt. Super. Ct. Envtl. Div. June 1, 2018) (Walsh, J.). But the distinction between the statutory right of appeal as an interested person, sometimes called "statutory standing," and the overarching justiciability question of "constitutional standing" has not been closely analyzed. The two concepts can appear to merge at times, due in part to the fact that some statutory provisions incorporate elements of constitutional standing.

A prominent example is the most commonly used "interested person" provision, 24 V.S.A. § 4465(b)(3). Subsection (b)(3) provides the right of appeal for:

> A person owning or occupying property in the immediate neighborhood . . . who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of [the] municipality.

24 V.S.A. § 4465(b)(3). There, the statutory requirements overlap with constitutional elements of standing. A person who owns "property in the immediate neighborhood" and alleges "physical or environmental" impacts to their interest which are relevant to the applicable zoning criteria will generally have the type of "injury-in-fact" required for standing. In a decision involving an interested person under Subsection (b)(3), this Court recognized that "the statutory requirements for . . . appeals of municipal decisions reflect [the] constitutional and prudential requirements" of the standing doctrine. In re 110 East Spring Street CU, No. 11-2-16 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. April 22, 2016) (Walsh, J.).

Here, in contrast to Subsection (b)(3), the group-of-ten provision under Subsection (b)(4) does not reflect elements of the constitutional standing doctrine. Subsection (b)(4) requires only that "ten persons" who vote or own property in the municipality or in adjoining municipalities "allege that any relief requested . . . will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality." 24 V.S.A. § 4465(b)(4). Merely owning property in town and raising a concern about the outcome of a municipal proceeding is unlikely to qualify as a "particular injury" under constitutional standing principles. Without a more specific interest in the proceeding and a showing of some direct impact, the allegations required by Subsection (b)(4) are more akin to "generalized grievance[s]." See Parker, 169 Vt. at 77 (quotation omitted).

This Court has not evaluated the constitutional standing of groups appealing under Subsection (b)(4). Past challenges to group-of-ten "standing" have asked whether appellants met the statutory requirements, not whether they demonstrated sufficient injuries to create a justiciable case or controversy. For the first time we are faced with the question whether the statutory requirements of Subsection (b)(4) replace or supersede constitutional considerations. We find that they do not.

The three central elements of the standing doctrine, requiring plaintiffs to demonstrate "a particular injury that is attributable to the defendant and that can be redressed by a court of law," are an "irreducible constitutional minimum." Parker, 169 Vt. at 77; Lujan, 504 U.S. at 560–61. As such, we have recognized that the legislature "cannot dispose of the constitutional components of standing." In re Champlain Marina, Inc. Dock Expansion, No. 28-2-09 Vtec, slip op. at 4 (Vt. Envtl. Ct. July 31, 2009) (Durkin, J.); see also Raines v. Byrd, 521 U.S. 811, 820 (1997) ("It is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing."). "Subject to constitutional limitations" however, the legislature may provide rights of appeal and restrict the "class of persons entitled to such review." See Garzo v. Stowe Bd. of Adjustment, 144 Vt. 298, 302 (1984).

Thus, the statutory requirements for appeal may coexist and overlap with constitutional standing requirements, but they are not the same. The right of appeal under § 4465(b)(4) is part of "the legislature's restrictions on the legal relief available in zoning cases" and does not eliminate the need for appellants to demonstrate the elements of constitutional standing when challenged.[1] See id. at 302; see also Diverging Diamond, Nos. 50-6-16 and 169-12-16 Vtec at 51–52 (June 1, 2018) (stating that the statutes governing Act 250 appeals "add a layer of 'statutory standing restrictions' that supplement the underlying constitutional standing requirements") (quoting Verizon Wireless Barton Act 250 Permit Telecomm. Facility, No. 6-1-09 Vtec, slip op. at 6 (Vt. Envtl. Ct. Feb. 2, 2010) (Durkin, J.)).

Appellants argue that legislatures may create a statutory injury-in-fact, yielding an avenue for plaintiffs to demonstrate constitutional standing in areas where no previously recognized

[1] We are further persuaded by the reasoning of a three-justice panel of the Vermont Supreme Court, in a non-precedential entry order discussing standing in municipal appeals. There, the litigant qualified as an interested person under the relevant statute, but the panel explained: "The issue of standing in the case of a zoning appeal in Vermont has two aspects. By statute the litigant must meet the standard of an interested party . . . [and] [a]s a matter of justiciability, the party must also have a sufficient stake in the issue which he seeks to raise." In re UVM Certificate of Appropriateness, No. 2013-301, 2014 WL 3714702 at *1 (Vt. Jan. 23, 2014) (unpub. mem.). The panel acknowledged the constitutional case or controversy requirement and concluded: "The fact that [the litigant] is an 'interested person' gives him the right to pursue an appeal before the Environmental Division; it does not allow him to raise whatever claims he desires. Consistent with basic justiciability requirements, he must still demonstrate a particularized injury." Id. at *2. We do not rely on this entry order but find that it aligns with the principles found in our own decisions and those of other courts.

injury existed. Appellants also contend that § 4465(b)(4) is such a statute, creating a cognizable injury for standing purposes. We agree that the "injury required by [the Constitution] may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." Lujan, 504 U.S. at 578 (internal quotation marks omitted). But there is an important distinction between an injury created by statute and a statutory right of appeal.

Appellants highlight several laws, including the federal Freedom of Information Act (FOIA), as examples of statutory rights that, when violated, provide standing in court. To illustrate why § 4465(b)(4) does not function in this way, we turn to the Zivotofsky case Appellant cites from the D.C. Circuit. There, the court explains that FOIA entitles members of the public to request specific information and "[t]he requester is injured-in-fact for standing purposes [if] he does not get what the statute entitles him to receive." Zivotofsky ex rel. Ari Z. v. Sec'y of State, 444 F.3d 614, 618 (D.C. Cir. 2006). We find no such entitlement in § 4465(b)(4). The statute here simply provides a right of appeal *for* injured parties; it does not create the injury itself.

Appellants appear to argue that § 4465(b)(4) gives a group-of-ten the substantive right to a ruling from the development review board declaring that a given project "will not be in accord" with the town's zoning bylaws, and that a contrary ruling results in an injury-in-fact regardless of whether the group is actually impacted by the project's approval. See 24 V.S.A. § 4465(b)(4). Even if this were a colorable reading of the statute, and we do not believe it is, such a reading would place § 4465(b)(4) in the category of "citizen suit" provisions purporting to allow any person to challenge the administration of the law. See, e.g., Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2618(a)(1)(A), 2619(a) (2018) (stating that "any person" may challenge an agency rule or bring suit). Citizen suit provisions are still limited by the constitutional standing doctrine, and thus even under Appellants' reasoning they must show that they are directly affected by the Project in this case. See Zivotofsky, 444 F.3d at 618 (noting that "the public interest in the proper administration of the laws . . . [cannot] be converted into an individual right by a statute that denominates it as such, and that permits all citizens (or for that matter, a subclass of citizens who suffer no distinctive concrete harm) to sue.") (quoting Lujan, 504 U.S. at 576–77) (alterations in original); Bennett v. Spear, 520 U.S. 154, 165 (1997) (indicating that such provisions create rights of action only "to the full extent permitted" under the Constitution).

Because the Court finds that parties appealing as a group-of-ten under § 4465(b)(4) must satisfy both statutory requirements and constitutional standing principles, we turn to the question of Appellants' constitutional standing in this case.

II. Appellants' Standing

The City's motion is one for summary judgment. In substance, however, it appears to be a motion to dismiss for lack of standing which we review pursuant to V.R.C.P. 12(b)(1) for lack of subject matter jurisdiction. In re Goddard Coll. Conditional Use, No. 175-12-11 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. July 5, 2012) (Walsh, J.). The City asks us to consider matters outside the pleadings and evaluate the motion under the summary judgment standard. The Court has taken this approach in the past, see Zaremba Group CU – Jericho, No. 101-7-13 Vtec, slip op. at 3 n.2 (Vt. Super. Ct. Envtl. Div. Apr. 21, 2014) (Walsh, J.), and we find it appropriate to do so here given that the parties had the opportunity to supplement their filings with statements of undisputed material facts and affidavits. See id.

We will grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). In determining whether there is any dispute over a material fact, "we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999). "Further, the nonmoving party receives the benefit of all reasonable doubts and inferences." Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356.

As discussed above, parties appealing as interested persons under § 4465(b)(4) must meet both statutory and constitutional requirements. Constitutional standing requires (1) a particular injury, (2) caused by the other party's conduct, (3) that is capable of redress by the court. Parker, 169 Vt. at 77. Here we are concerned with the first element.

Considering all materials associated with the City's motion and Appellants' opposition, accepting as true all of Appellants' allegations, and making all inferences in their favor, only two members of Appellants' group have suggested that they will experience any direct impacts related to the Project. These two, John Russell and Les Blomberg, have provided detailed

allegations supported by the affidavits filed in connection with their motion to intervene as individuals. We must evaluate the other members however, to determine whether the group retains at least ten persons.[2] In re Brandon Plaza Conditional Use Application, No. 128-8-10 Vtec, slip op. at 4 (Vt. Super. Ct. Envtl. Div. Aug. 5, 2011) (Wright, J.) (appellants under § 4465(b)(4) may continue to pursue an appeal only "if the membership of the group does not fall below the statutory minimum of ten persons.")

Appellants have not disputed the City's statement of facts concerning the other group members, nor have they put forward any factual allegations bearing on the issue of standing for those members. The City contends that Appellants relied exclusively on § 4465(b)(4) for standing and did not establish the "particular injur[ies]" required under the constitutional doctrine. See Parker, 169 Vt. at 77. Subsection 4465(b)(4) can be a useful route to appeal for parties who do not otherwise qualify as interested persons. In contrast to Subsection (b)(3) there is no requirement to own or occupy "property in the immediate neighborhood" of a project; citizens further afield may group together and protect their interests. See 24 V.S.A. §§ 4465(b)(3), (4). But under constitutional principles, the interests must be legally cognizable and somehow affected by the project such that there is a "particular injury." Examples might include the impacts of traffic congestion or different types of pollution.

In this case, the only members of Appellants' group who have alleged an interest affected by the Project are Mr. Russell and Mr. Blomberg. Giving Appellants the benefit of all reasonable

[2] We have considered the possibility that appellants under § 4465(b)(4) might satisfy the constitutional standing doctrine as a group, rather than as individuals, through what is known as "organizational standing." The essence of organizational standing is that "an organization whose members are injured may represent those members in a proceeding for judicial review." Sierra Club v. Morton, 405 U.S. 727, 739 (1972). This type of standing appears to be reserved for legally recognized "organizations" or "associations" with an identifiable purpose and clear constituents or members. See, e.g., Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977) (a Washington State agency had standing to represent apple producers where the agency's purpose was to protect the market for Washington apples and the producers were injured by discrimination in interstate commerce). We find that organizational standing does not apply to a group-of-ten because an appellant group is fundamentally different from an "organization" in this context. An appellant group is not formally organized, has no purpose beyond maintaining an appeal, and has no membership or constituency beyond the group itself. An appellant group does not serve in a representative capacity. Further, any advocacy group or other entity that could take advantage of organizational standing would be counted as a single member of a group-of-ten; it could not satisfy the statutory requirements on its own. See 24 V.S.A. § 4465(b)(4) (requiring ten "persons" who are voters or real property owners); 24 V.S.A. § 4303(17) (defining "person" in part as: "any . . . incorporated or unincorporated organization or group").

doubt, we conclude that all members apart from Messrs. Russell and Blomberg lack standing in this appeal. We **DISMISS** Appellants' group in its entirety, because a group-of-ten under § 4465(b)(4) must have at least ten persons and Appellants no longer meet the statutory minimum.[3] See Brandon Plaza Conditional Use Application, No. 128-8-10 Vtec at 4 (Aug. 5, 2011). The Court now turns to the motion to intervene.

Motion to Intervene of Les Blomberg and John Russell

Mr. Russell and Mr. Blomberg, members of the former group of Appellants, move to intervene in this proceeding pursuant to V.R.E.C.P. 5(c) and V.R.C.P. 24(a). They assert that they are interested persons under 24 V.S.A. § 4465(b)(3). Rule 5(c) provides that parties who miss the 21-day deadline for filing a notice of appearance "may enter an appearance by filing a timely motion to intervene." V.R.E.C.P. 5(c). In turn, 10 V.S.A. § 8504(n)(5) provides a right of intervention for "interested persons" as defined under 24 V.S.A. § 4465. See 10 V.S.A. § 8504(n)(5). The issue here is twofold: (1) whether the motion is timely, and (2) whether Messrs. Russell and Blomberg qualify as interested persons. See In re Fowler NOV, No. 159-10-11 Vtec, slip op. at 4 (Vt. Super. Ct. Envtl. Div. Aug. 8, 2012) (Durkin, J.) (finding that a motion to intervene under Rule 5(c) triggers review of a party's "statutory qualifications to appear").

The timeliness of a motion to intervene is a matter within the Court's discretion. Ernst v. Rocky Road, Inc., 141 Vt. 637, 639-40 (1982). In determining whether the motion is timely, we consider four factors: "the power to have sought intervention at an earlier stage in the case; the case's progress; harm to the plaintiffs; and availability of other means to join the case." Id. at 639-40; see also State v. Quiros, 2019 VT 68, ¶ 16.

The third and fourth factors, harm to the plaintiffs and the ability to join the case by other means, are undisputed. Mr. Russell and Mr. Blomberg were part of the now-dismissed appellant group, and they intervene with the goal of maintaining the appeal. There is no harm to them. There has been no suggestion that Messrs. Russell and Blomberg could intervene in another manner. Therefore, we turn to the first two factors.

[3] This dismissal has no effect on the party status of individuals involved in the related Act 250 appeal, Docket No. 59-5-19 Vtec.

The City argues that Mr. Russell and Mr. Blomberg had the power to intervene at an earlier stage, as they "could have and should have" claimed interested person status under § 4465(b)(3) in the first instance. We agree that the choice to appeal under § 4465(b)(3) was available, but Mr. Russell and Mr. Blomberg had no reason to intervene because they were already appellants in the case. Despite the City's contention that there is no explanation for the delay, the justification is self-evident: the need for intervention arose only after the City's motion challenging the appellant group's standing. Messrs. Russell and Blomberg moved to intervene at the earliest relevant stage, in response to the City's motion.

Finally, the case's progress is still in early stages and intervention would not materially change the course of the proceeding. The City asserts that permitting intervention at this point would be highly prejudicial, but we disagree. Though months have passed since the first filing, this is a complex matter and preliminary motion practice is ongoing. The trial date has not been set. Mr. Russell and Mr. Blomberg's participation would be limited to the issues raised by the former Appellants, and the City would not face an additional burden in preparing its case. See In re Garen, 174 Vt. 151, 155 (2002) (intervenors may not add new issues). The City seems primarily concerned with the "substantial time and resources" it devoted to challenging the former Appellants' standing, yet the City succeeded in dismissing the entire group. If Mr. Russell and Mr. Blomberg demonstrate bona fide interests which are no longer represented, we fail to see how permitting intervention at this early stage creates anything more than an inconvenience for the City.

Considering the totality of the circumstances, we find that the motion to intervene is timely. The question remains whether Mr. Russell and Mr. Blomberg are interested persons under § 4465(b)(3). To qualify, they must: (1) own or occupy property in "the immediate neighborhood" of the subject property; (2) "demonstrate a physical or environmental impact on [their] interest under the criteria reviewed"; and (3) allege that, "if confirmed," the DRB decision "will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality."[4] 24 V.S.A. § 4465(b)(3). Mr. Russell and Mr. Blomberg meet the third element of

[4] The City has not disputed whether Mr. Russell and Mr. Blomberg participated in the DRB proceeding below, and we find that they did participate through their signed petition and statement of concern. See 24 V.S.A. § 4471(a)

the interested person test, as they allege that the Project as approved will not be in accord with provisions of the zoning ordinance or the town plan. At issue is whether they meet the first two elements.

These two elements are related, and the Court often considers the distance between an interested person's property and a project site in its review of the person's alleged harm. See, e.g., In re DeSimone and Moisis Family Trust Conditional Use Application, No. 247-12-09 Vtec, slip op. at 8 (Vt. Envtl. Ct. Apr. 27, 2010) (Wright, J.). In turn, "[t]he determination of whether an individual is in the 'immediate neighborhood' of a proposed project is not strictly based on distance, but instead depends on 'whether the [party] potentially could be affected by any of the aspects of the project which have been preserved for review on appeal." Id. (quoting In re Vanishing Brook Subdivision, No. 223-10-07 Vtec, slip op. at 6 (Vt. Envtl. Ct. Jan. 16, 2008) (Wright, J.)) (alteration in original). To qualify as interested persons at this stage, Mr. Russell and Mr. Blomberg must only demonstrate a reasonable possibility of harm to a particularized interest protected by the relevant zoning regulations, considering the distance between their properties and the project site. See In re McCullough Crushing Inc., Nos. 179-10-10 and 3-1-10 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. June 27, 2013) (Walsh, J.); In re UVM Certificate of Appropriateness, No. 90-7-12 Vtec, slip op. at 12 (Vt. Super. Ct. Envtl. Div. Feb. 26, 2013) (Walsh, J.) (requiring a party to make out facts "sufficient to establish a non-speculative demonstration, or reasonable possibility, of a physical or environmental impact under criteria that must be reviewed for [the] Project").

As the City has not contested whether Messrs. Russell and Blomberg qualify as interested persons, we review the uncontroverted factual allegations and assertions contained in the motion to intervene and attached affidavits.

A. Mr. Russell

Mr. Russell states that he owns several properties in Montpelier, including 107 State Street and an associated parking lot. The record shows that the proposed Project is to be located

(defining participation as "offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding").

on two parcels at 60 and 100 State Street (the Project site), and part of the parcel at 100 State Street currently includes the Capitol Plaza Hotel. Mr. Russell also asserts that he is in Montpelier on most days, where he routinely parks his car and visits each of his properties by walking along State Street. He alleges that, if the Project is approved, he will experience particularized impacts stemming from traffic congestion and negative changes to the character of State Street.

With respect to traffic, Mr. Russell states that the only vehicle access to his parking lot is through an entrance on State Street across from the Capitol Plaza Hotel. He alleges that the Project as proposed will worsen traffic problems on State Street, interfering with vehicle access to his lot and his use and enjoyment of the street as a pedestrian. Regarding the character of the neighborhood, Mr. Russell alleges that the Project as proposed represents a "dramatic and negative departure from the character of State Street" that he experiences as part of his daily pedestrian use of State Street.

For the purposes of this motion, we conclude that Mr. Russell owns property in the immediate neighborhood and has established a reasonable possibility of physical or environmental impacts to his interests under the criteria reviewed. Though distance is not dispositive, Mr. Russell's property appears to be in close proximity to the Project site. As such, any traffic impacts related to the Project may directly affect Mr. Russell's access to his property. Impacts to traffic and the character of the neighborhood may also affect Mr. Russell's personal use and enjoyment of State Street as a pedestrian. In contrast with more "generalized grievances" like citizen objections to the way that laws are administered, Mr. Russell alleges injuries to his own interests. See 109-111 Shelburne St./97 Locust St. CU, No. 67-5-17 Vtec, slip op. at 12 (Vt. Super. Ct. Envtl. Div. May 10, 2019) (Durkin, J.) (finding that an objection to inconsistent application of the law was too generalized); Vermont Transco LLC Subdivision, No. 32-3-18 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Oct. 17, 2018) (Walsh, J.) (alleged impacts must affect an individual "in a way that is distinct from the effect on the general community"). The Montpelier regulations at issue are in the record, and they appear to protect interests in pedestrian access, traffic mitigation, and the character of the neighborhood.

On the factual allegations and the motion before us, Mr. Russell is an interested person under 24 V.S.A. §4465(b)(3). The Project's conformance with regulations remains for the Court to determine at trial.

B. Mr. Blomberg

Mr. Blomberg asserts that he occupies an office at 52 State Street, and that his office "directly overlooks" the proposed area for the Project at 60 State Street. He states that he frequently recreates and commutes to work on foot or by bicycle, and he walks past the Project site multiple times per day. Mr. Blomberg alleges that the Project as proposed will increase traffic in downtown Montpelier, affecting his use and enjoyment of State Street, surrounding streets, and the recreation path on his regular rides and walks.

Based on the information before us, we conclude that Mr. Blomberg occupies property in the immediate neighborhood and has alleged a reasonable possibility of physical or environmental impacts under the criteria reviewed. A person may occupy property at their office location for purposes of § 4465(b)(3), and here Mr. Blomberg states he is at the office almost every workday. See DeSimone and Moisis Family Trust, No. 247-12-09 Vtec at 8 (Apr. 27, 2010). Mr. Blomberg has demonstrated that his office at 52 State Street is in close proximity to the Project site. Traffic impacts to State Street or the surrounding streets could directly affect his regular commute as a pedestrian and cyclist. These alleged impacts and interests are sufficient to establish that Mr. Blomberg is an interested person under 24 V.S.A. § 4465(b)(3) for purposes of the motion to intervene.[5] We repeat that the Project's conformance with regulations remain for evaluation at trial.

Conclusion

[5] We recognize that Mr. Blomberg has also asserted a unique interest in "Montpelier's historic buildings and nature," as it was a major factor in his decision to live in the town and he has spent many hours volunteering to preserve and promote it. He alleges that the Project as proposed will change the historic character of the downtown area and negatively impact his interest. While we find Mr. Blomberg's interest in traffic issues and pedestrian access to be sufficient, these "historic character" allegations may provide additional support for his status as an interested person.

The City's motion for summary judgment as to Appellants' standing is **GRANTED**, and Appellants are **DISMISSED**. The motion to intervene by John Russell and Les Blomberg is **GRANTED**.

Electronically signed on November 12, 2019 at 11:04 AM pursuant to V.R.E.F. 7(d).

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Thomas G. Walsh, Judge
Superior Court, Environmental Division