

VERMONT SUPERIOR COURT  
Environmental Division  
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Burlington, VT 05401  
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Docket No. 22-ENV-00096

Weston Hotel Partners (DEL) LLC, CU and Site Plan Appeal
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**ENTRY REGARDING MOTION  
AND JUDGMENT ORDER**

Title: Motion to Remand to Administrative Officer for Issuance of Permit (Motion: 1)  
Filer: Michael John Tarrant, II  
Filed Date: June 01, 2023

Before the Court is an application for conditional use and site plan approval for a retail bake shop located at 613 Main Street, Weston, Vermont (Project). Weston Hotel Partners LLC is the applicant (Applicant) and is represented by Michael J. Tarrant, Esq. By decision dated September 6, 2022, the Town of Weston Development Review Board (DRB) approved the Project. Todd LaRue appealed the September 6 approval (Appellant). Mr. LaRue is represented by Gary R. Kupferer, Esq.

The scope of this appeal is limited to one Question: Did the Weston Development Review Board correctly conclude that the application's fifteen-foot parking setback complies with the requirement set forth in Town of Weston Zoning Regulations § 570 that a setback of at least twenty-five feet is required on the front, side and rear lines?

Presently before the Court is Applicant's motion to remand this matter back to the Town as the parties have reached agreement on the sole setback issue. Attached as Exhibit B to its motion, Applicant provides a revised site plan incorporating the parties' agreement on the size of the disputed setback. This revision implements a 25-foot setback.

This revision effectively renders the sole question on appeal moot. "A case is moot if the reviewing court can no longer grant effective relief." In re Moriarty, 156 Vt. 160, 163 (1991)

(quoting Sandidge v. Washington, 813 F.2d 1025, 1025 (9th Cir. 1987)). “The mootness doctrine derives its force from the Vermont Constitution, which, like its federal counterpart, limits the authority of the courts to the determination of actual, live controversies between adverse litigants.” Holton v. Dep't of Emp. & Training (Town of Vernon), 2005 VT 42, ¶ 14, 178 Vt. 147. If “the appellant obtains [the same] relief by another means” after filing a case, that case will likely become moot. In re Barlow, 160 Vt. 513, 518, (1993). “Any alternative relief, however, must be complete so that ‘nothing further would be ordered by the court.’” Id. (quoting 13A C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3533.2, at 238 (2d ed. 1984)).

Appellant agrees with the Applicant that the applicable setback is twenty five (25') feet. The Court notes, however, that Appellant does not agree with the Applicant’s revised site plan as the parties dispute the location of the boundary line between their properties. Thus, they disagree where to measure the 25-foot setback from.

The Environmental Division is a Court of limited jurisdiction. 4 V.S.A. § 34. This Court's jurisdiction is limited to: “(1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220; (2) jurisdiction of matters arising under 24 V.S.A. chapter 61, subchapter 12 and chapter 117; and (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.” Id. To the extent that the parties dispute the location of their common boundary, this Court is without jurisdiction to opine on that private property rights issue. In re Woodstock Cmty. Tr. & Hous. Vt. PRD, 2012 VT 87, ¶ 40, 192 Vt. 474. Should the parties seek a declaration of any private property right, they can seek one in the Civil Division. See 4 V.S.A. § 31.

When the Court is presented with an issue that involves the rights to property related to a development before it, the Court’s analysis is constrained by its jurisdictional limits. As a result, we are only charged with determining whether Applicant has made a threshold burden of producing some evidence of a legal interest and right in the property to be used in connection with the Project. In re Leiter Subdivision Permit, No. 85-4-07 Vtec, slip op. at 4–5 (Vt. Env'tl. Ct. Jan 2, 2008) (Durkin, J.).

In short, the Appellant and Applicant agree on the applicable setback but do not agree on where it is measured from because of the boundary line dispute. Applicant provides a

survey in support of its application, and this survey satisfies the threshold showing of Applicant's legal interest within the context of a zoning dispute before this Court.

Accordingly, this matter is **REMANDED** to the Town for the administrative purpose of issuing the permit consistent with the revised site plan attached to Applicant's motion for remand as Exhibit B.

Electronically signed June 30, 2023 in Burlington, Vermont pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" in a cursive script and the last name "Walsh" in a more blocky, cursive style.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division