

VERMONT SUPERIOR COURT  
Environmental Division  
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Docket No. 22-ENV-000101

Malav, Inc. (d/b/a Fairbanks Inn) NOV Appeal

### DECISION ON MOTIONS

Title: Motion to Dismiss Cross Appeal of Michael Ruggles (Motion: 8)  
Filer: Claudine Safar, Esq.  
Filed Date: July 20, 2023

Cross-Appellant's Opposition to Motion to Dismiss filed by Maryellen Griffin, Esq. on August 16, 2023.

Town of St. Johnsbury's Reply to Memorandum in Opposition filed by Claudine Safar, Esq. on August 29, 2023.

Cross-Appellant's Sur-Reply to St. Johnsbury's Motion to Dismiss filed by Maryellen Griffin, Esq. on September 12, 2023.

**The motion is GRANTED.**

This is an appeal of a Notice of Violation issued by the Town of St. Johnsbury (Town) to Malav, Inc. (d/b/a Fairbanks Inn) (Malav) dated August 25, 2022 alleging that Malav was operating the Fairbanks Inn in St. Johnsbury (the Inn) as a "Temporary Overnight Shelter," as that term is defined by the Zoning and Subdivision Code of Ordinances of the Town of St. Johnsbury (the Code), without site plan or conditional use approval in violation of the Code (the NOV). On appeal of the NOV to the Town Development Review Board (DRB), the DRB upheld the NOV. Malav appealed that decision to this Court, as did Michael Ruggles, who was a then-resident of the Inn through the State of Vermont's Transitional Housing Assistance Program. Presently before the Court is the Town's motion to dismiss Mr. Ruggles cross-appeal because he no longer lives at the Inn and, alternatively, does not otherwise qualify as an interested person pursuant to 24 V.S.A. § 4465(b)(3) in his new residence such that he can maintain his cross-appeal.

In this action, Malav is represented by David Dunn, Esq. and Joseph C. Galanes, Esq. Mr. Ruggles is represented by Maryellen Griffin, Esq. The Town is represented by Claudine Safar, Esq.

### Legal Standard

A party's standing is a question of subject matter jurisdiction. Brod v. Agency of Nat. Res., 2007 VT 87, ¶ 8, 182 Vt. 234. Therefore, the Court reviews the Town's motion to dismiss Mr. Ruggles' appeal under the standard of review afforded by Vermont Rules of Civil Procedure (V.R.C.P.) Rule 12(b)(1). In re Main St. Place LLC, Nos. 120-7-10 Vtec, 191-11-10 Vtec, et. al., slip op. at 2 (Vt. Super. Ct. Envtl. Div. Jun. 19, 2012) (Durkin, J.). That is, the Court accepts as true all uncontroverted factual allegations and construes them in a light most favorable to the nonmoving party, here Mr. Ruggles. Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245.

### Discussion

Pursuant to 24 V.S.A. § 4465(b)(3), an "interested person" means:

A person owning or occupying property in the immediate neighborhood of a property that is subject to any decision or act taken under [Chapter 117], 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 polices, purposes, or terms of the plan or bylaw of that municipality.

The uncontroverted factual allegations show that at the time of his appeal Mr. Ruggles was a resident of the Inn. He participated in the proceedings before the DRB regarding the NOV. Mr. Ruggles moved out of the Inn at some point in 2023 before May 24, 2023. See Town Exs. A, B. His present residence is now approximately 1.4 miles away from the Inn across St. Johnsbury.

At the time of his appeal, Mr. Ruggles, as a resident of the subject property through the Transitional Housing Assistance Program, clearly owned or occupied property within the immediate neighborhood of the Inn. However, to the extent that Mr. Ruggles asserts that he remains an interested person because he lived at the Inn at the time the NOV was issued subject to the Transitional Housing Assistance Program, there is no provision of § 4465(b)(3) that would extend to prior occupiers. See In re Shuyler NOV, No. 29-2-12 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. May 30, 2012) (Walsh, J.) (interpreting the plain language of § 4465 as being specific to current landowners or occupiers of subject properties, or properties in the immediate

neighborhood) (citations omitted). In fact, “affording interested person status to a past owner or occupier could lead to absurd results because a past owner or occupier’s interest may be adverse to those of a current owner or occupier.” *Id.* Thus, Mr. Ruggles does not retain interested person status by virtue of being a resident of the Inn at the time of his appeal.

Having reached this conclusion, we must determine whether Mr. Ruggles, despite his relocation, has interested person status due to the location of his new residence. We conclude that he does not.

When determining whether a party’s property lies within the “immediate neighborhood,” we consider the proximity of the party’s property to the subject property, as well as “the physical environment surrounding the project and the nexus between the project, the appellant, and the appellant’s property.” In re Farmer Mold & Mach. Works, Inc. CU Permit, No. 15-2-14 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Jan. 7, 2015) (Walsh, J.) (citation omitted). There is a close relationship between whether a party is in the immediate neighborhood and whether the party can show a physical or environmental impact on their interest. See In re DeSimone & Moisis Family Tr. Conditional Use Application, No. 247-12-09 Vtec, slip op. at 8 (Vt. Envtl. Ct. Apr. 27, 2010) (Wright, J.) (discussing the overlap between the first and second requirements of 24 V.S.A. § 4465(b)(3)). To demonstrate an impact, the party must show “how the development under review will impact him or her specifically (i.e., describe a concrete and particularized injury).” In re UVM Certificate of Appropriateness, No. 90-7-12 Vtec, slip op. at 11 (Vt. Super. Ct. Envtl. Div. Feb. 26, 2013) (Walsh, J.). *aff’d*, No. 13-301 (Vt. 2014) (unpub. mem.).

Mr. Ruggles now lives 1.4 miles away from the Inn, on the other side of the Passumpsic River. See Town Ex. C. Mr. Ruggles does not allege that he frequents the area of the Inn for work or recreation or otherwise views the Inn with any regularity since moving. Instead, Mr. Ruggles alleges that he will be impacted by the upholding of the NOV despite living across the Town because “[l]imiting the availability of hotel rooms for people who use public assistance has an impact throughout downtown St. Johnsbury because it sends people into unsheltered homelessness throughout downtown.” Memo. in Opposition at 3. Assuming this is correct, this is a generalized grievance that does not afford an individual standing because it is indistinct from a general impact on the Town’s residences. See In re Town Meadow, LLC, No. 110-5-06 Vtec, slip

op. at 3, 4 n.3 (Vt. Envtl. Ct. Sept. 25, 2006) (Wright, J.); see also Riverview Mews, LLC v. Richard Elec., No. 215-11-17 Vtec, slip op. at 5 (Vt. Envtl. Ct. Apr. 7, 2008) (Wright, J.). Thus, this grievance, coupled with the fact that Mr. Ruggles now lives nearly a mile and a half away from the Inn, does not afford Mr. Ruggles interested person status pursuant to § 4465(b)(3).

To the extent that Mr. Ruggles alleges that property owners in the same zoning district as a subject property are within the immediate neighborhood for the purposes of 24 V.S.A. § 4465(b)(3), this is not supported by the plain language of § 4465(b)(3), which is narrower in scope than concluding all within a zoning district qualify as being in the “immediate neighborhood.” See In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 7, 188 Vt. 262 (recognizing that courts cannot “judicially expand the class of persons entitled to such [appellate] review” when standing is regulated by statute) (quoting Garzo v. Stowe Bd. of Adjustment, 144 Vt. 298, 302 (1984)). Thus, we conclude that the fact that Mr. Ruggles resides in the same zoning district as the Inn does not, in itself, require a conclusion that he is in the “immediate neighborhood” of the Inn.

Finally, to the extent that Mr. Ruggles argues that he is entitled to appear as an interested person because he is a member of a protected class impacted by the Town’s alleged discrimination in the NOV, such is similarly not a consideration within the scope of § 4465(b)(3) that would allow this Court to afford him interested person status in this appeal. See id. In support of this argument, Mr. Ruggles cites three federal cases in which parties brought suit against individuals and entities for violations of the Fair Housing Act and United States Constitution. See Memo. in Opposition at 4. As discussed in our previous decision addressing alleged discrimination, this Court is bound both by our limited jurisdiction, we are also bound by the scope of our review in this de novo appeal. See In re Malav NOV, No. 22-ENV-00101, slip op. at 6—9 (Vt. Super. Ct. Envtl. Div. Apr. 28, 2023) (Walsh, J.). These cases do not guide this Court’s analysis in the present context. There is no provision of § 4465(b) that affords interested person status in this regard.

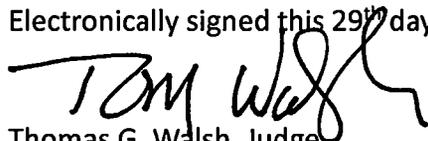
As such, Mr. Ruggles is not within the immediate neighborhood of the Inn because he lives nearly a mile and a half across St. Johnsbury from the Inn, on the other side of the Passumpsic River. Further, Mr. Ruggles’ proffered impact to his interests is not related to his proximity to the

Inn or concrete and particularized injuries to him. Thus, we conclude that Mr. Ruggles is not an “interested person” pursuant to 24 V.S.A. § 4465(b)(3). Therefore, the Town’s motion to dismiss is **GRANTED** and Mr. Ruggles’ cross-appeal is **DISMISSED**.

**Conclusion**

For the reasons set forth herein, Mr. Ruggles did not retain § 4465(b)(3) interested person status after he moved from the Inn. Further, Mr. Ruggles does not have interested person status at his present residence because he is not within the immediate neighborhood of the Inn and has failed to allege a physical or environmental interests within the context of this zoning appeal. Thus, the Town’s motion to dismiss Mr. Ruggles’ cross-appeal is **GRANTED** and his cross-appeal is **DISMISSED**.

Electronically signed this 29<sup>th</sup> day of September 2023 pursuant to V.R.E.F. 9(D)

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and written in a cursive-like font.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division