

they are intended, Rule 59(e) motions typically are denied." Appeal of Van Nostrand, Nos. 209-11-04 & 101-5-05 Vtec, slip op. at 4.

Appellants' Motion to Alter focuses on two issues. First, Appellants claim that the undisputed facts reflect, as a matter of law, that the Appellees' proposed vegetation screening is insufficient to satisfy Regulations § 707.C. In support, Appellants claim that the Court erred in its analysis of the sufficiency of the vegetation screening by failing to address Regulations §§ 708.E and 708.F.

Regulations §§ 708.E and 708.F provide suggested methods for screening and buffering "parking areas." Id. These methods for implementing screening and buffering are not mandatory; they are prospective ideas that the DRB (and this Court on appeal) "may," or may not, require an applicant to implement. Id. Whether the methods used by a permit applicant provide sufficient screening under Regulations §707.C is a question that is specific to the facts surrounding each permit application. Whether this Court should exercise the discretion afforded by Regulations §§ 708.E and 708.F and require further screening of the proposed parking area is a factual determination that we have concluded must be left to the de novo trial

Since our first Decision addressed a pre-trial motion for summary judgment, we viewed the material facts in a light most favorable to the non-moving party, who in this instance are Appellee/Applicants. See Madkour v. Zoltak, 181 Vt. 347, 351, 924 A.2d 11, 14 (2007). We also note that, at this time, this Court has a limited perspective in comparison to that of the parties, since the Court is not yet familiar with the neighborhood and property at issue. With this limited perspective, and in an effort to view the facts in the proper light, we again conclude that it is improper to render a summary conclusion that Applicants' proposed site plan provides inadequate screening for this five-space parking area. Our current conclusion does not mean that at trial, judgment for Appellee/Applicants is a foregone conclusion. Rather, we are simply concluding at this time that the regulatory language does not support a summary dismissal of the pending application.

Appellants' Motion to Alter appears to rest on the same arguments presented in their prior Motion for Partial Summary Judgment: that Regulations § 707.C contains mandatory language that requires a summary ruling that Appellee/Applicants' proposed screening is insufficient as a matter of law. We continue to disagree. More important to our analysis here, a motion to alter is not an avenue to relitigate the previously-addressed issues. See Appeal of Van Nostrand, Nos. 209-11-04 & 101-5-05 Vtec, slip op. at 4. Although Appellants claim that the Court erred by failing to address Regulations §§ 708.E and 708.F, when viewed more closely, the Appellants' claim is more accurately characterized as a disagreement with the Court's analysis that the Regulations do not contain the mandatory directive that Appellants suggest. To be successful, a motion to alter must serve a purpose greater than expressing disagreement with a court's prior decision. See In re Boutin PRD Amendment, No. 93-4-06 Vtec, slip op. at 2. Appellants' motion to alter fails in this regard. Only after the benefit of receiving evidence at trial, including that which will be put into context by a site visit, can the Court make a determination of what amount of additional screening for these five parking spaces "may" be appropriate under the Regulations.

Second, Appellants claim that the Court relied on mistaken, or "mischaracterized," factual information when making its decision regarding pedestrian facilities and pedestrian circulation under Regulations § 703.A.

Appellants claim that their argument has been mischaracterized as relating to "an increase in pedestrian traffic" rather than the pedestrian traffic that will specifically result from the Appellees' proposed parking lot. The individual pedestrian traffic and the overall increase in pedestrian traffic are inter-related issues under Regulations § 703.C(2), which provides that "pedestrian facilities shall be required whenever necessary to serve existing or projected pedestrian traffic." *Id.* Following the Regulations, the Court is required to consider at trial both the existing and projected pedestrian traffic for this project and what facilities may be required for each.

Appellants have failed to identify any manifest errors of fact or law upon which the prior Decision was based. In the absence of some manifest error of fact or law being identified, a motion to alter must fail. See Northern Sec. Ins. Co., 2008 VT 96, ¶ 44, 184 Vt. at 321.

As to pedestrian traffic, the Court conducted its prior analysis by viewing this issue in a light most favorable to Appellees. In so doing, and solely for purposes of considering Appellants' pre-trial motion, the Court determined that a genuine dispute remained on the material fact of whether the additional five-parking spaces would generate or increase pedestrian traffic and whether additional pedestrian facilities would be necessary. We concluded then, and now, that this is a disputed factual issue that may only be resolved through trial.

Prior to granting Appellants' summary judgment request, we must arrive at an unwavering conclusion that no material facts are in dispute and that the applicable law requires an entry of judgment. We perceive a dispute as to the material facts, and we do not view the applicable law as requiring an entry of judgment at this time. Thus, an evidentiary merits hearing is necessary, at which all parties will be afforded an opportunity to present their relevant, admissible evidence.

For all these reasons, we conclude that Appellants' Motion to Alter should be DENIED.

This matter remains scheduled for a final pre-trial telephone conference on Monday, June 28, 2010 at 9:00 AM and a merits hearing on July 21-22, 2010, at the Vermont Environmental Courthouse, commencing on both days at 9:00 AM, unless otherwise directed by the Court.

We request that the parties confer and attempt to agree upon the best date and time for the Court to conduct a site visit with the parties. The Court suggests that the site visit could occur at 8:30 AM on July 21, 2010.

Thomas S. Durkin, Judge
February 18, 2010
Date

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Date copies sent to: _____ Clerk's Initials _____

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