

STATE OF VERMONT  
ENVIRONMENTAL COURT

In re: Appeal of  
David Jackson

}  
}  
}  
}  
}

Docket No. 43-2-00 Vtec

Decision and Order on Motion to Dismiss

This is the third of three related appeals<sup>1</sup> now pending in Environmental Court. In Docket No. 43-2-00 Vtec, Appellant David Jackson appealed from a January 24, 2000 decision of the Zoning Board of Adjustment (ZBA) of the Town of Castleton. Appellant is represented by John D. Hansen, Esq.; Appellees Gerald and Patricia McCue are represented by E. Patrick Burke, Esq.; Interested Person Agnes Earls has appeared and represents herself; and the Town is represented by John S. Liccardi, Esq.

This appeal relates to Appellant's application for approval of an as-built structure on his property in Castleton. Appellees have moved to dismiss this appeal on the grounds that Appellant's application was incomplete and did not conform to the Zoning Regulations, that it was submitted after the fact for a structure built in violation of the Zoning Regulations, and that it violates 24 V.S.A. §4472(d) as a de facto appeal of the permit issued in February 1998 and not appealed.

The questions of whether the application was complete or conforms to the Zoning Regulations are evidentiary questions which depend on material facts to be established at trial. If the structure was constructed in violation of the February 1998 permit or the Zoning Regulations, an enforcement action may be appropriate, but one has not been filed to date. In any event, even if a notice of violation or an enforcement action is pending, that

---

<sup>1</sup> The other two appeals are: Appeal of McCue, Docket No. 258-12-99 Vtec, in which David and Gloria Jackson have filed a cross-appeal, and Appeal of Jackson, Docket No. 165-9-99 Vtec.

fact does not preclude an applicant from applying for approval of a structure as-built. The merits of Appellant's application, including the adequacy of the application, will be for the de novo hearing now scheduled for July 7, 2000.

The application for the structure as-built is not an impermissible challenge to the February 1998 permit which was not appealed. An applicant is entitled to apply for and to have the Zoning Administrator or ZBA rule on a successive application, as long as that application differs materially from the prior application. In determining whether the successive application is permissible, it should not make any difference whether the prior application was approved or denied.

Accordingly, based on the foregoing, Appellees' Motion to Dismiss Docket No. 43-2-00 Vtec is DENIED. It is consolidated with the other two appeals: Appeal of McCue, Docket No. 258-12-99 Vtec, in which Mr. Jackson has filed a cross-appeal, and Appeal of Jackson, Docket No. 165-9-99 Vtec. The merits of all three appeals are scheduled to be heard on July 7, 2000. Any other pretrial motions should be filed on or before June 2, 2000, so that they may be briefed and decided before the scheduled hearing. For the parties' information, any postponement of the scheduled hearing would result in a rescheduled date after August 16, 2000.

Done at Barre, Vermont, this 22<sup>nd</sup> day of May, 2000.

---

Merideth Wright  
Environmental Judge