

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-284

FEBRUARY TERM, 2002

In re Appeal of Ashley and Janet
Gray

}	APPEALED FROM:
}	
}	Environmental Court
}	
}	DOCKET NO. 189-9-00 Vtec
}	
}	Trial Judge: Merideth Wright
}	
}	

In the above-entitled cause, the Clerk will enter:

Appellants appeal from a summary judgment of the environmental court in favor of the Town of Lyndon. Appellants contend the court erred in concluding that the Town's zoning regulations required them to apply for a zoning permit to undertake certain work on their property. We affirm.

Appellants own a restaurant in the Town of Lyndon. The restaurant constitutes a pre-existing non-conforming structure under the Town's zoning regulations because it lies within a front setback requirement. Appellants received permits from the Town in 1981, 1986, and 1992 authorizing certain additions to the restaurant. In April and May 2000, appellants undertook certain additional work on the restaurant, including the replacement of an exterior staircase, and alterations to the facade and roof. Appellants did not apply for a zoning permit before undertaking this work. As a result, the Town's zoning administrator issued a notice of violation. The Town's zoning board of adjustment denied an appeal, and appellants then appealed to the environmental court.

The Town's zoning ordinance provides that no person shall commence development without first obtaining a permit, and defines land development as including "the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure." The trial court found that appellants' work on the roof, facade and exterior stairway constituted a reconstruction, structural alteration or enlargement of a structure under the ordinance. In this regard, the court found:

The alterations to the roof, facade and to the exterior staircase differed from the prior configuration of those elements of the structure, and took place within the setback area. The alterations to the roof facade extended the roof some inches farther into the setback than it had been before and changed its appearance from a flat roofline facing to a slanted or mansard-type of roof facing.

Accordingly, the court concluded that a zoning permit was required, and granted summary judgment in favor of the Town. This appeal followed.

Appellants contend that the work to the roof, facade and stairway were merely "repairs" of the existing structure in "exactly the same manner as existed prior to the repair work," and therefore did not require a permit. Even assuming that repairs, as thus understood, did not require a permit, the contention overlooks the court's finding that the "alterations" to the roof, facade and staircase "differed from the prior configuration of the elements of the structure," and included a slanted or mansard-style roof rather than a flat roofline. Appellants have not challenged this finding, which was supported by the record, and which amply supports the court's conclusion that the work constituted a "reconstruction" or

"structural alteration" within the meaning of the ordinance. See Timberlake Assocs. v. City of Winooski, 170 Vt. 643, 645 (2000) (mem.) (we will not disturb court's factual findings unless clearly erroneous); Badger v. Town of Ferrisburgh, 168 Vt. 37, 39 (1998) (we are bound by environmental court's construction of zoning ordinance unless clearly erroneous, arbitrary or capricious).

Appellants also assert that "a standard should be adopted to establish when an amendment to a zoning permit is required." Although their argument is not altogether clear, appellants appear to contend that the work to the roof, facade and staircase represented merely "foreseeable changes" under their earlier permits in 1981, 1986, and 1992, and therefore should not have required a new permit. These permits expired by their terms two years after their approval, however, and therefore provided no basis for the work. Appellants also appear to argue that there should be a provision in the zoning ordinance requiring new permits only for material or substantial changes in a permitted project. Even if the record supported the contention that the work represented only minor changes to work accomplished under prior permits (which is unclear), the claim is more properly directed to the Town's planning commission and selectboard, rather than this Court.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice