

NOTICE OF DECISION

TOWN OF WOODSTOCK, VERMONT

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TOWN DEVELOPMENT REVIEW BOARD

Appeal of Administrative Officer Decision

In re 0 Rabbit Hill Way
Permit Application No. T-5203

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by Jack Kauders, Esq. on behalf of Howard Krum and Mary Margaret Sloan (“Appellants”) for an appeal of the Administrative Opinion (“AO”) issued on August 30, 2022, by Director of Planning and Zoning (“DPZ”), Steven Bauer.
2. The DPZ and the Chair of the Town Development Review Board (“TDRB” or “The Board”) received the notice of appeal on Friday, September 9, 2022.
3. On Monday, September 19, 2022, a copy of the notice of public hearing was sent to the Appellants.
4. On Wednesday, September 21, 2022, a notice of public hearing was posted at the following places:
 - a. Outside the Municipal Clerk’s office;
 - b. Norman Williams Public Library;
 - c. Woodstock Emergency Services Building; and
 - d. On the Town website at: townofwoodstock.org/planning-zoning
5. On Thursday, September 22, 2022, a notice of public hearing was published in the Vermont Standard.
6. On Wednesday, September 28, 2022, a copy of the notice of public hearing was sent to Daniel and Meridith Peirce (“Appellees”).
7. The appeal was considered by the TDRB at a public hearing on Thursday, October 13, 2022, which was held within 60 days of the filing of the notice of appeal.

8. Present at the hearing were the following members of the TDRB:
 - Wade Treadway, Chair
 - Kim French, Vice Chair
 - Brad Prescott
 - Alan Willard

9. Present at the hearing were the following members of the public:
 - Mary Margaret Sloan, Appellant
 - Jack Kauders, Attorney for Appellants
 - Daniel Peirce, Appellee
 - Meredith Peirce, Appellee
 - A.J. LaRosa, Attorney for Appellees

10. At the beginning of the hearing, the TDRB afforded those persons wishing to achieve status as an interested person under 24 V.S.A. § 4465(b) an opportunity to demonstrate that they met the statutory criteria. Only the appellants and appellees demonstrated interested person status.

FINDINGS OF FACT

During the hearing, the Board received the following testimony:

- The DPZ, then Interim Zoning Administrator, issued the Appellee's zoning permit on June 6, 2022.
- Between June 6, 2022 and June 21, 2022, the Appellee's contractor posted the permit card on the property, visible from Rabbit Hill Way.
- On June 21, 2022, during a site visit, the DPZ observed that the zoning permit card ("notice of permit") was "prominently displayed in a position visible from the road," in conformance with § 807(H) of the Town Zoning Regulations ("TZR").
- Throughout July 2022, the Appellants wrote to the Appellees four times, "requesting specific mitigation measures."
- On July 21, 2022, the Appellees responded to the Appellants and notified them that "our permits are in order," and that "both the state and town officials have visited the site and expressed their confidence that all activity to date is allowable."
- On August 12, 2022, the Appellants said that they had learned that a permit had been issued and requested a copy of the permit from the DPZ.
- On August 15, 2022, the DPZ sent a copy of the permit to the Appellants, thus providing actual notice of the permit.
- On August 17, 2022, the Appellants wrote to the DPZ and requested a temporary stop-work order.

- On August 23, 2022, the Appellants met with the DPZ in person and sent additional reasoning for their request of a stop-work order on August 26, 2022.
- On August 30, 2022, the DPZ, issued an AO responding to the Appellant’s request for the issuance of a stop order on the Appellee’s permitted development.
- In the AO, the DPZ denied the Appellant’s request because they had failed to make an appeal within the 15-day appeal period. Under the rule of finality, the DPZ concluded that the Appellants lacked standing to appeal the issuance of the permit.
- On September 9, 2022, the Appellants filed a notice of appeal with DPZ and the Chair of the TDRB.

DECISION

The first question we must answer is whether notice was proper. The Town Zoning Regulations have three main requirements for notice. First, within three (3) working days of issuance: “[one] copy [of the permit] shall be posted in a public place; and [one copy of the permit shall be] given to the listers.” TZR §807(D). Second, notice of permits must be “published within fourteen (14) days in the newspaper of record as designated by the Selectboard.” TZR §807(E). Third, a zoning permit card must be “prominently displayed in a position visible from the road.” TZR § 807(H).

At the hearing, the DPZ provided testimony that allowed us to examine whether his actions properly met the requirements. First, while serving as Interim Zoning Administrator, the DPZ explained that the procedure for posting permits in a public place was to gather all permits issued throughout the week and post a stack in the display case located in front of Town Hall. Because of that procedure, the Board recognizes that the public may not have knowingly had access to view the permit. Therefore, the Board cannot confidently accept nor deny that the DPZ met the notice requirement of TZR §807(D). Second, the DPZ testified that he had no record of publication in the Vermont Standard or Valley News, the newspapers of record. The Board is left to assume that such lack of evidence indicates the lack of publication. Therefore, the Board finds that the DPZ did not meet the publication requirement of TZR §807(E).

Finally, both sides presented evidence as to whether the zoning permit card, posted on Rabbit Hill Way, a private road, meets the notice requirements. This is a long-standing issue that this Board is not tasked with solving. The dilemma stems from the conflicting language between the town regulations and the statute. The Town’s regulation provides that “before land development begins, “a zoning permit card[,] issued by the Administrative Officer[, must be] prominently displayed in a position visible from the road.” TZR §807(H). Whereas the statute provides that “each permit... shall require [the] posting of a notice of permit... within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal in section 4465 of this title has passed.” 24 V.S.A. § 4449(a)(3)(b). While work could and should be done to sort out this ambiguity, this is the job of the state and local legislative bodies, not this Board. Under the existing language, the Board finds that the posting on Rabbit Hill Way meets the Town’s notice requirements but does not meet the statute’s requirements.

Upon evaluation of this evidence, we conclude that the procedural steps taken to provide notice are at best contentious. So, we turn our focus to whether these alleged defects in notice result in the right to an extension of the appeal period. We conclude that it does not.

Lack of notice does not automatically provide the right to appeal. In re Mahar Conditional Use Permit, 206 Vt. 559, 567 (2018). Specifically, the statute lays out that “no defect in the form or substance... of notice required under § 4464(a)(1) and (a)(2) ... shall invalidate the action of the appropriate municipal panel where reasonable efforts are made to provide adequate posting and notice” unless “the defective posting or notice was materially misleading in content.” 24 V.S.A. § 4464(a)(5). The Board notes that while the statute specifically refers to “action[s] of the appropriate municipal panel,” we interpret the intent to include actions taken by the Administrative Officer.

As the Appellants point out, and we agree, this rule does not provide a pathway for applicants and municipal officers to simply avoid the notice requirements altogether. In In re Mahar, the Court also said that “[T]he statute [24 V.S.A. § 4464(a)(5)] does not apply to situations where no notice at all is provided.” Id. at 575. Relying on this application, we find that the statute’s intent is to preclude interested parties from indefinitely delaying the appeal period based on the reasoning that they never received notice.

In this case, the lack of publication in the newspaper, the potential lack of visibility on the bulletin board, and the placement of the permit card on a private road are only grounds to invalidate the permit and reopen the appeal period if we were to find that such lack of notice was materially misleading and the Board had no reason to believe that the Appellants had actual or constructive notice of the permit before the end of the appeal period. We find no evidence to support the first claim and unconvincing evidence to support the second.

First, mistakes were admittedly made during a difficult period of transition, but we do not find those mistakes to rise to the level of being materially misleading. Instead, we find them to be the unfortunate byproduct of limited staff serving limited hours. Second, on June 5, 2022, the Appellants were the first to report the site work taking place on Rabbit Hill Way. On the same day, the DPZ replied to the Appellants and let them know that the “pending administrative permit... was delayed due to the applicant’s miscalculation of fees.” At that time, the Appellants at least had constructive notice of the permit’s imminent issuance upon the Appellee’s ability to resolve the fee issue. On June 6, 2022, the next day, that fee issue was resolved, and the permit issued.

On July 26, 2022 the Appellants asked the DPZ for a copy of the permit application. It was not until August 12, 2022 that the Appellants asked the DPZ for a copy of the issued permit. Without evidence to support a claim that lack of notice was materially misleading or that the Appellants had no notice of the permit before the appeal period ended on June 21, 2022, we cannot invalidate the actions of the Administrative Officer or extend the appeal period.

With the understanding that the Appellants are not entitled to an extended appeal period, the next question to address is whether the Appellants timely filed their appeal. We find that even with the facts in their favor, their appeal was untimely.

The Town Zoning Regulations state that “permits shall not take effect for a period of fifteen

(15) days in the case of an administrative permit... from the day of issuance [,] during which time[,] appeals from the decision may be filed.” TZR §807(F). To determine whether an interested person has filed a proper appeal, we turn to the statutory criteria found in 24 V.S.A. § 4466, which provides that “... notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the circumstances.”

The Board acknowledges that the Appellants made multiple inquiries about the on-site activities and made their general disapproval of those activities known. As discussed above, the lack of notice does not automatically provide the right to appeal. Similarly, we find that general inquiries and complaints equally do not constitute an appeal under 24 V.S.A. § 4466. We further find that as of June 21, 2022, the DPZ, serving as clerk of the TDRB, had received general complaints but neither the Appellants nor any other interested persons had filed a notice of appeal that met the criteria laid out in 24 V.S.A. § 4466.

The Board recognizes that the Appellants challenge the procedural validity of the permit itself. However, those arguments, even if justified, can only be addressed once this Board establishes jurisdiction to hear such arguments through the filing of a timely appeal. Returning to In re Mahar, which establishes that the time to file an appeal runs from the date of the act or decision, not from when a party receives notice. In re Mahar Conditional Use Permit, 206 Vt. 559, 566 (2018). Additionally, the rule of finality provides that “upon the failure of any interested person to appeal to an appropriate municipal panel under section [24 V.S.A. § 4465] ...all interested persons affected shall be bound by that decision or act of that officer... and shall not thereafter contest, either directly or indirectly, the decision or act...” 24 V.S.A. § 4472(d).

According to the Appellant’s own timeline, they “learned that a permit had, in fact, been issued” on August 12, 2022. They testified that they received a copy of the permit from the DPZ on August 15, 2022. However, they did not file a notice of appeal until September 9, 2022. Even if we accepted the Appellant’s argument that the 15-day period began only after they received notice, they filed their appeal 23 days after receiving such notice. Moreover, we disagree with their application of the rule and find that the 15-day appeal period started on June 6, 2022 and ended on June 21, 2022. The Appellants filed their notice of appeal 57 days after the appeal period ended. Therefore, we hold that all interested persons, including the Appellants, are bound by the permit.

CONCLUSION

Based upon these findings, this Board concludes that even if notice did not meet every requirement, and even when viewing the evidence from a position most favorable to the Appellants, their appeal was untimely. Accordingly, we affirm the August 30, 2022, Administrative Opinion and hold that all interested parties are bound by the issuance of permit #T-5203-22 because they failed to appeal to the appropriate municipal panel with the 15-day appeal period.

Affirmed.

FOR THE BOARD:

Wade Treadway, Chair

NOTICE:

Interested persons who participated in the proceeding(s) before the Town Development Review Board may appeal this decision to the Vermont Environmental Court. Such interested must file an appeal within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.