

VERMONT SUPERIOR COURT  
Environmental Division  
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Docket No. 23-ENV-00116

181 Parker Hill Road Application

**ENTRY ORDER**

Title: Motion for Summary Judgment (Motion: 4)  
Filer: James A. Dumont, Esq.  
Filed Date: March 8, 2024

Memorandum in Opposition filed by Charles O.M. Peel, Jr., Attorney for Michael Jasinski, on April 5, 2024.

Reply to Memorandum in Opposition filed by James A. Dumont, Attorney for Anthony and Kathleen Vertrano, on April 19, 2024.

**The motion is DENIED.**

This is an appeal of a September 18, 2023 decision of the Town of Springfield Development Review Board (DRB) approving an application submitted by Michael Jasinski (Applicant) for conditional use approval to conduct cannabis cultivation as a home business in Applicant's existing garage (the Garage) at property located at 181 Parker Hill Road, Springfield, Vermont (the Property). Christopher and Cynthia Berg, Coriander Santagate, Emily Stringham, Anthony and Kathleen Vertrano, and Lucia Zachowski appealed the approval to this Court. The Vertranos, through counsel, have moved for summary judgment on their Revised Question 1. Applicant opposes the motion.

"Summary judgment is appropriate only where the moving party establishes that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law." Samplid Enters., Inc. v. First Vermont Bank, 165 Vt. 22, 25 (1996); V.R.C.P. 56(a); V.R.E.C.P. 5. "In assessing whether a genuine dispute as to any material fact exists, we recognize that '[t]he moving party has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences.'" Couture v. Trainer, 2017 VT

73, ¶ 9, 205 Vt. 319 (quoting Price v. Leland, 149 Vt. 518, 521 (1988)). The Court therefore takes “all allegations made by the nonmoving party as true.” Allstate Ins. Co. v. Vose, 2004 VT 121, ¶ 13, 177 Vt. 412.

The Vertrano’s move for summary judgment on their Revised Question 1. This Question asks:

1. Where: a) a home business application is for cultivation of cannabis in a garage no part of which is used for dwelling purposes, and b) Springfield’s Land Use Development Ordinance (LUDO) §§ 30-6 and 30-596(a) limit accessory buildings to those which are “incidental and subordinate” to the principal use or structure and “only used for vehicle parking, storage and primarily [sic] building access,” and require that a home business be secondary to use of the building for dwelling purposes, should the home business application be denied?

Amended Statement of Questions (filed on January 2, 2024).

The Vertrano’s Statement of Undisputed Material Facts (SUMF) in support of the pending motion contains four “facts.” Three of these facts are citations or references to Springfield Land Use Development Regulations (the Regulations) and therefore legal statements, not facts. The sole remaining fact is a description of the project on appeal. See SUMF at ¶ 1. It is on this only fact that the totality of the motion’s argument rests: that Applicant is not entitled to a permit because the Garage must solely be “used for vehicle parking, storage, or primarily building access.” Regulations § 6(4). Applicant disputes the materiality of this fact and argues that facts not raised by the Vertrano’s may impact the Court’s review of the Regulations applied to the Garage and project, such as the Garage’s preexisting status, its relation and connection to the main home on the Property, and the applicable zoning district. Some of these facts raised by Applicant are raised in a Statement of Additional Material Facts, which the Vertrano’s did not formally respond to as set forth in V.R.C.P. 56(c)(3) but appear to dispute the additional facts in many regards, and some are raised in the substance of their reply to the pending motion.

We interpret the parties’ filings as presenting a dispute of fact that may be material to the application before the Court. This conclusion is required based on the presentation of the portions of the Regulations applicable to the project on appeal.

The application before the Court is one for a home business. The Regulations define a home business as one “carried on in a portion of a dwelling/residence or in an accessory structure to a dwelling/residence.” Regulations § 30-6 (“Home business”). The section of the Regulations governing home businesses, § 30-596, reiterate this, stating that a home business must “be carried on wholly within the dwelling/residence or accessory structures to the dwelling/residence . . . .” Regulations § 30-596(2). The Regulations define “accessory building/structure,” however, as, among other things, being “only used for parking, storage, or primarily building access.” Regulations § 30-6 (“Accessory building/structure”). In that definition, however, it notes that examples of accessory structures include “garages, garden and tool sheds, and playhouses.” *Id.*

Thus, the Regulations are unclear and somewhat inconsistent in the fact that they both specifically authorize home businesses, and other uses, within accessory structures and define accessory structures as being for parking, storage, or access, which would functionally prohibit home businesses in accessory structures if read alone, contrary to the applicable home business provisions of the Regulations.<sup>1</sup> The Court cannot resolve the interpretation of the Regulations as applied to the project before the Court on the record presented by the pending motion, in which the sole fact presented is the project as defined by the application. This is particularly true when the substantive filings by the parties, both in opposition to the motion and the Vertrano’s reply in support of their motion, show that there are disputes of fact that have not been fully presented to the Court in the pending motion which may be material to the Court’s interpretation of the Regulations.

For these reasons, the motion is **DENIED**. The Court directs the parties to confer and file a stipulated scheduling order with the Court by **Thursday, May 23, 2024**. Should the

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<sup>1</sup> The definition of accessory structure includes as an example of such a structure “playhouse.” Employing a common understanding of the term playhouse, such a structure not used for parking, storage or access, which implies that the limitation on use of an accessory structure that the Vertranos ask the Court to interpret in their motion may not be as stringent as they proffer. Further, in other portions of the Regulations, other examples of accessory structures are provided, such as barns, see Regulations § 30-647(2), and structures used for the keeping of poultry in certain zoning districts, see Regulations § 30-576. These uses are, likely, not limited to parking, storage or access. The Court directs the parties to these provisions in the context of the pending motion to note that a more broad factual understanding of the use of an accessory structure may be warranted and relevant than that presented by the pending motion.

parties be unable to reach a stipulation, each party shall file their proposed scheduling order with the Court by the same date.

Electronically signed this 8th day of May 2024, pursuant to V.R.E.F. 9(D)

A handwritten signature in black ink that reads "Tom Walsh". The signature is written in a cursive, slightly slanted style.

Thomas G. Walsh, Judge  
Vermont Superior Court, Environmental Division