VERMONT SUPREME COURT
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Case No. 24-AP-317

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

JUNE TERM, 2025

In re Green Mountain Dog Camp, LLC (Janine Manninen*)	}	APPEALED FROM:
	}	
	}	Superior Court,
	}	Environmental Division
	}	CASE NO. 24-ENV-00005
		Trial Judge: Thomas G. Walsh

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

Applicant Janine Manninen appeals pro se from the Environmental Division's summary-judgment decision in favor of defendants on her request to amend an existing Act 250 permit. We affirm.

The court relied on the following undisputed facts in reaching its conclusion. Applicant owns two lots in the Winch Hill subdivision in Roxbury, Vermont. She owns Green Mountain Dog Camp, LLC, and operates a dog training and daycare facility at the property. The relevant operations include dog daycare and training uses, along with three, 6.5-foot tall, plastic-fenced dog runs; five kennels; an 8-foot-by-12-foot lean-to that provides shelter during storms and a small heat source in winter; and a 625-square-foot dog-training center with a grooming tub inside a converted garage.

The Winch Hill subdivision is subject to conditions in an existing Act 250 permit. The conditions imposed by the original Act 250 permit run with the land and are binding on landowners in the subdivision, including applicant. They include a conservation easement and the terms of a forest management plan, created in 2002, which was incorporated into the permit. The forest management plan was developed to protect significant deer wintering habitat on substantial portions of the tract, and it was an integral part of the decision to grant an Act 250 permit for the subdivision. The plan is binding and any changes in the plan that would result from proposed actions by a lot owner, are subject to review and approval through an amended land permit.

Applicant's deed references the conservation easement, which states that "forest management will be conducted in accordance with the guidelines put forth in the Winch Hill Forest Conservation Zone Management Plans developed by the Patten Environmental Trust and the Vermont Department of Fish and Game." The easement also imposes various use restrictions, including restrictions on timber cutting.

The court found that parts of the forest conservation easement are located on applicant's property. Applicant's project is adjacent to mapped deer wintering habitat and areas subject to the Forest Management Plan and Conservation Easement and may impact the protected habitat's function.

In 2022, applicant conducted a timber harvest at the property. That same year, applicant filed a land-use permit application for the "as-built" dog daycare and dog training project, described above. The District Commission dismissed the application, concluding that applicant was not entitled to amend the existing permit. Applicant appealed to the Environmental Division, which reached a similar conclusion.

The court set forth the law relevant to permit-amendment requests. It first considered the nature of the permit condition that applicant sought to amend, and specifically, whether she "propose[d] to amend a permit condition that was included to resolve an issue critical to the issuance of the permit." Act 250 Rules, Rule 34(E)(1). If an application involves a critical permit condition, the court next weighs the competing goals of finality and flexibility by considering an enumerated list of factors. See Act 250, Rule 34(E)(2), (3)(a)-(g).

The court found that Condition 12 in the existing permit, which required the creation and implementation of a forest management plan binding on all owners, was a critical permit condition. This condition, and the associated forest management plan conditions, were intended to protect and preserve deer wintering habitat. The court rejected applicant's assertion that its project was in "compliance" with these conditions and thus was not seeking to amend them. This assertion was unsupported by the evidence, and it ignored the conditions and findings in the existing Act 250 permit, which restricted activity within the forest management area.

Applicant did not dispute that the project as built was adjacent to protected areas and had the potential to impact the purpose of the forest management plan, which was the protection of deer wintering habitat. The court found this apparent from the steps applicant proposed as mitigation measures to limit, but not eliminate, impacts to the deer wintering area from the project. Because the project sought to allow impacts not contemplated by the existing permit that were outside the scope of its terms and the imposition of Condition 12, the court found that applicant sought to amend a critical permit condition.

The court then considered in detail the factors relevant to whether the finality of the permit outweighed flexibility. See Act 250, Rule 34(E)(3)(a)-(g). It concluded that no factor weighed in favor of flexibility. The court thus held that applicant was not entitled to amend the existing permit, and defendants were entitled to summary judgment in their favor.

In her opening brief, applicant largely raises arguments that are irrelevant to the order on appeal. This includes challenges to the proceedings before the District Commission. With respect to the Environmental Division's decision, applicant asserts that the court erred in finding that because the dog daycare is located "near" a deer wintering area that it is also "adjacent" to the deer wintering area. She contends that the word "adjacent" is vague and subjectively used.[1]

[1] Even if she cannot operate a dog daycare, applicant argues that she should be allowed to operate other aspects of her business, such as training dogs in her garage. Applicant fails to show that she raised this argument below and we therefore do not address it. See In re S.B.L., 150 Vt. 294, 297 (1988) ("It is the burden of the appellant to demonstrate how the lower court erred warranting reversal. We will not comb the record searching for error."); see also V.R.A.P.

We review the Environmental Division's summary judgment decision de novo, using the same standard as the trial court. Wark v. Zucker, 2021 VT 37, ¶ 10, 214 Vt. 605. Summary judgment is warranted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Id.; V.R.C.P. 56(a). Summary judgment was properly granted to defendants here. The undisputed findings cited by the court support its conclusion that applicant was seeking to amend a critical permit condition and that the request should be denied based on the factors set forth in Act 250, Rule 34(E)(3)(a)-(g).

Applicant offers no compelling argument otherwise. The term "adjacent" is not vague or subjective. Applicant did not dispute below that the project as built was, at a minimum, adjacent to protected areas and had the potential to impact the purpose of the forest management plan, which was the protection of deer wintering habitat. Indeed, applicant concedes in her reply brief that "her facilities are adjacent to protected areas" and argues that she has taken steps to prevent harm from her activities. The Environmental Division applied the appropriate standard in evaluating applicant's request and the undisputed facts support its conclusion. There was no error.[2]

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice

28(a)(4) (explaining that argument on appeal must contain citations to the "parts of the record on which the appellant relies"). Applicant also presents numerous new arguments in her reply brief. We do not address these arguments because they were not properly raised. See Gallipo v. City of Rutland, 2005 VT 83, ¶ 52, 178 Vt. 244 (providing that issues not raised in original brief cannot be raised for first time in reply brief).

[2] The Court heard oral argument in this case on June 4, 2025. Appellant did not appear. On June 5, appellant filed a motion seeking to reschedule oral argument. That motion is denied.