

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org

Docket No. 25-ENV-00038



Khan Subdivision Application

ENTRY ORDER

Motion: Motion to Dismiss Appearance

Filer: Edward Deptula, Appellant

Filed Date: August 22, 2025

Memorandum in Opposition, filed on Aug. 22, 2025 by Michael J. Tarrant, Attorney for the Town of Montgomery

Reply to Memo in Opposition, filed on August 26, 2025 by Appellant Edward Deptula

The motion is DENIED.

This is an on-the-record appeal of a May 5, 2025 decision by the Town of Montgomery Development Review Board (DRB) approving an application for subdivision at 561 Highland Drive, Montgomery Center, Vermont. Neighboring landowner Edward Deptula (Appellant) appealed the DRB's decision to this Court on June 2, 2025.

On August 20, 2025, Applicants Karita and Nafus Khan entered an appearance in this matter. Appellant opposed their appearance, arguing that they haven't timely appeared or properly moved to intervene.

Appellant's motion is based upon V.R.E.C.P. 5(c). Pursuant to V.R.E.C.P. Rule 5(c):

An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within 21 days after the date on which the notice of filing of the last notice of appeal to be filed was served . . . by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with [applicable rules]' provided that any person enumerated in 10 V.S.A. § 8504(n)(1)–(3) may file and serve an appearance in a timely fashion. Any other person who has not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene.

Rule 5(c) references 10 V.S.A. § 8504(n)(1)–(3) in noting who may appear in an action by simply filing a timely notice of appearance. This includes a “party by right.” 10 V.S.A § 8504(n)(2). A “party by right” includes the permit applicant. 10 V.S.A. § 8502(5)(A). Appellant argues that Applicants are outside the 21-day window to enter an appearance and therefore must file a motion to intervene. We disagree.

This Court is obligated to interpret and administer its rules to ensure summary and expedited proceedings. V.R.E.C.P. 1. Here, the Legislature has designated permit applicants as a party by right in any permit appeal regarding their application. This designation is reflected in Rule 5 to allow a party by right to enter an appearance within a timely fashion. This language is not constrained by the 21-day deadline to enter an appearance for any person who is not a party by right. To conclude otherwise would simply create inefficiencies that run contrary to the legislative intent of Rule 5 and 10 V.S.A. § 8504.

Here, Applicants have entered an appearance 78 days after the filing of the Notice of Appeal. While not ideal, we conclude that this entry is timely given the limited development so far in this case. This is an on-the-record appeal, and the parties have not yet agreed to a briefing schedule. Thus, there is no prejudice to the existing parties in allowing Applicants to appear. It would be inefficient and unnecessary to require Applicants, who are a party by right, to file a motion to intervene at this time. Applicants have not filed a cross-appeal and are therefore limited to addressing only those issues raised in Appellant’s Statement of Questions.

Electronically signed on August 28, 2025, pursuant to V.R.E.F. 9(d).

A handwritten signature in blue ink, appearing to read "Joseph S. McLean". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph S. McLean
Superior Court Judge
Environmental Division