



163 Shannon Street Zoning Permit Approval

MERITS DECISION

This is an on-the-record appeal by Carma and James Fitzpatrick (Appellants) of a January 30, 2026 Town of Middlebury (Town) Development Review Board (DRB) decision denying Appellants' appeal of a zoning permit issued by the Town Zoning Administrative Officer (Zoning Administrator) to Gretchen Ayer (Applicant) for the construction of a gravel driveway spur off of her existing driveway at 163 Shannon Street, Middlebury, Vermont (the Property). Appellant appealed that decision to this Court.

In this matter, Appellants are represented by Christopher Boyle, Esq. Applicant is represented by Benjamin H. Deppman, Esq. The Town has appeared and is represented by David W. Rugh, Esq. and Zachary I. Handelman, Esq.

Legal Standard

In an on-the-record appeal, the Court considers only the decision below, the record made before the municipal panel, and the briefs submitted by the parties. In re Saman ROW Approval, No. 176-10-10 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Nov. 9, 2011) (Durkin, J.). In such an appeal, the Court does not take new evidence or make its own factual determinations. Instead, the Court reviews the municipal panel's factual findings to determine whether the decision below "explicitly and concisely restate[s] the underlying facts that support the decision." See 24 V.S.A. § 1209(a)-(b).

The Court will only affirm factual findings if they are supported by substantial evidence in the record below. See In re Stowe Highlands Resort PUD to PRD Application, 2009 VT 76, ¶ 7, 186 Vt. 586. The Court does not assess the credibility of witness testimony or reweigh conflicting evidence in the record. See Devers-Scott v. Off. of Prof'l Regulation, 2007 VT 4, ¶ 6, 181 Vt. 248. The Court simply looks to whether the record includes relevant evidence that a "reasonable person could accept . . . as adequate" support for the factual findings." Id. (quoting Braun v. Bd. of Dental Exam'rs, 167 Vt. 110, 114 (1997)). When we review an appeal on-the-record, the Court reviews legal determinations

de novo. In re P&R Assoc., LLC, No. 74-6-12 Vtec, slip op. at 3–4 (Vt. Super. Ct. Envtl. Div. Feb. 1, 2013) (Walsh, J.). Our review is additionally limited to those issues raised in the Appellants’ Statement of Questions. See V.R.E.C.P. 5(f).

Statement of Questions

Appellants raise four Questions in their Statement of Questions. They ask:

1. Did the DRB err in concluding “the Zoning Administrator correctly applied the 30’ clearance requirement” in §705(II)(A) of the Middlebury, VT Zoning and Subdivision Regulations (“Regulations”)?
2. Did the DRB err in concluding “the 30’ clearance requirement” in §705(II)(A) of the Regulations “is satisfied at the front entrance” of the applicant’s property?
3. Did the DRB err in concluding “[r]elating to . . . dimensions of the driveway and clearance to property lines and structures . . . the Zoning Administrator’s review of the design was appropriate, the correct dimensional standards were applied, and [the standards are] met by the permitted design”?
4. Did the DRB err in “uphold[ing] the Zoning Administrator’s action in approving permit number[] 2025-112”?

Statement of Questions (filed on Mar. 19, 2026).

Factual Background

Applicant owns the Property, which is improved by an owner-occupied duplex with an existing driveway. Appellants occupy property adjoining the Property. Applicant applied for a zoning permit to extend the driveway to access the Property’s rear yard and provide three off-street parking spaces for the duplex’s other unit. After the permit was approved by the Town’s Zoning Administrator, Appellants appealed to the Town DRB. The DRB held a public hearing on December 22, 2025 attended by all parties. In a January 30, 2026 decision, the DRB upheld the Zoning Administrator’s issuance of the permit and denied Appellants’ appeal, which they timely appealed to this Court.

Discussion

I. Issue Preservation

As a threshold matter, Applicant asserts that Appellants have not adequately preserved their challenge to the application’s compliance with Regulations § 705(II)(A) in this appeal because Appellants’ initial notice of appeal to the DRB did not contain a direct citation to the provision. The Court concludes that Appellants have adequately preserved the issue.

Applicant’s argument appears to conflate two legal theories: issue preservation under the Vermont Rules of Appellate Procedure (V.R.A.P) and compliance with 24 V.S.A. § 4466. With respect to issue preservation, this Court is governed by V.R.A.P. when hearing appeals on-the-record. See

V.R.E.C.P. 5(h); see also In re Ferra & Fenn Gravel Pit Application, No. 159-9-10 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Sept. 29, 2011) (Durkin, J.). As such, briefs submitted in such appeals must conform to V.R.A.P. 28. See In re Ledgewood Condo PUD CU Amendment Application, No. 150-7-07 Vtec, slip op. at 6 (Vt. Envtl. Ct. Aug. 26, 2008) (Durkin, J.) (citing In re Miller, No. 59-3-07 Vtec, slip op. at 7 (Vt. Envtl. Ct. Nov. 5, 2007) (Durkin, J.)). V.R.A.P. 28(a)(4) requires an appellant's brief to include in its argument "the issues presented, how they were preserved . . . with citations to the authorities and parts of the record on which the appellant relies."

The purpose of the preservation rule "is to ensure that the original forum is given an opportunity to rule on an issue prior to [appellate] review." In re White, 172 Vt. 335, 343 (2001) (emphasis added). For an issue to be preserved, "a party must present the issue to the [body below] with specificity and clarity in a manner which gives the [body] a fair opportunity to rule on it." Pratt v. Pallito, 2017 VT 22, ¶ 16, 204 Vt. 313 (quotation omitted). This Court has recognized that some aspects of the preservation rule not relevant here may be applied flexibly in an on-the-record appeal from an appropriate municipal panel. See In re Stowe Country Club, No. 25-ENV-00021, slip op. at n.3 (Vt. Super. Ct. Envtl. Div. Mar. 26, 2026) (Walsh, J.).

Appellants have complied with the preservation rule here. Their briefing clearly addresses the issues presented and includes citations to the record created below, showing how those issues were preserved and presented to the DRB in the first instance. The application's compliance with Regulations § 705(II)(A) was fully presented to the DRB below, with both parties given an opportunity to present testimony and evidence to the DRB. The DRB rendered a final determination on the issue. Thus, the issue was preserved in this respect.

To the extent that Applicant asserts Appellants are prohibited from raising compliance with Regulations § 705(II)(A) because their notice of appeal to the DRB contained no citation to the provision, the Court disagrees. Pursuant to 24 V.S.A. § 4466, a notice of appeal from a zoning administrator's decision must:

[B]e 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.

24 V.S.A. §4466.

No party disputes that Appellants' initial notice of appeal was timely and complied with § 4466 but for a citation to Regulations § 705(II)(A). To the extent that notice did not strictly comply with

§ 4466 by failing to cite to Regulations § 705(II)(A), the Court nonetheless concludes that we may properly consider the provision in our analysis. This is because Appellants functionally amended their notice of appeal on the record at the public hearing before the DRB. At the outset of the hearing on Appellants' appeal, Ms. Fitzpatrick noted that reference to § 705 was an "accidental omission" and provided an overview of concerns related to this provision. See Transcript at 9:16–10:1. No party challenged the addition of Regulations § 705 at that time. The DRB went on to discuss the application's compliance with that provision at length and ultimately rendered a decision on § 705(II)(A). At no point prior to the pending opposition briefing did Applicant challenge the DRB's authority to issue that decision either before the DRB or to this Court through cross-appeal. Further, Applicant had a full opportunity to present evidence on this provision before the DRB.¹ The Court concludes Appellants' challenge to Regulations § 705(II)(A) is properly before the Court.

II. Regulations § 705(II)(A)

Regulations § 705(II)(A) requires that, for safe and adequate access, "no driveway shall be constructed in a corridor of land or land area having a width of less than 30 feet at its narrowest point. To provide room for snow, drainage and landscaping, a driveway shall be set back at least 5 feet from the lot or right-of-way lines."

When interpreting a zoning ordinance, the Court's goal is to effectuate the intent of the drafters, first by looking to the plain meaning of the regulation at issue and the "whole of the ordinance." In re Tyler Self-Storage, 2011 VT 66, ¶ 13 (quotation omitted). In construing statutory or ordinance language, our paramount goal is to implement the intent of its drafters. Morin v. Essex Optical/The Hartford, 2005 VT 15, ¶ 7, 178 Vt. 29. We will therefore "adopt a construction that implements the ordinance's legislative purpose and, in any event, will apply common sense." In re Laberge MotoCross Track, 2011 VT 1, ¶ 8, 189 Vt. 578 (quotation omitted); see also In re Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22 (quoting Lubinsky v. Fair Haven Zoning Bd., 148 Vt. 47, 49, 195 Vt. 586 (1986)) ("Our goal in interpreting [a zoning regulation], like a statute, 'is to give effect to the legislative intent.'"). We presume the plain, ordinary meaning of the adopted language. See Toensing v. Attorney General, 2019 VT 30, ¶ 7, 210 Vt. 74. "Accordingly, words not defined . . . are given their plain and ordinary meaning, which may be obtained by consulting dictionary definitions." Id. (internal quotations and citations omitted). Moreover, we will not interpret zoning regulations in ways that lead to irrational results. See Stowe Club Highlands, 164 Vt. 272, 280 (1995) (refusing to

¹ Alternatively, Applicant could likely have requested additional time to allow her to present evidence on this provision. No such request was made, nor was any other challenge to the DRB's ability to hear the issue presented.

interpret regulation such that it leads to irrational results). Finally, because zoning regulations limit common law property rights, we resolve any uncertainty in favor of the property owner. Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22. With these provisions of interpretation in mind, we turn to the applicable regulatory and statutory provisions.

The plain language of Regulations § 705(II)(A) is clear and unambiguous. A “corridor” is, in relevant part, defined as “an area or stretch of land identified by a specific common characteristic or purpose.” Merriam-Webster Dictionary, corridor (online) (accessed Aug. 12, 2026). “Narrow,” when used as an adjective, is defined as “of slender width; of less than standard or usual width.” Merriam-Webster Dictionary, narrow (online) (accessed Aug. 12, 2026). “Narrowest” is the superlative form of “narrow,” meaning the most definitionally narrow.

Under these definitions, Regulations § 705(II)(A) plainly requires that the narrowest point on a stretch of land over which a driveway is proposed measure 30 feet or more.² This requires a review of the entirety of the area and length that the driveway will occupy, not simply the entry point alone. Functionally, the provision requires not less than a 30-foot wide stretch of “open space” or “open land” over which a driveway can be sited.³ This interpretation comports with Regulations § 705(II)(A)’s reference to a 5-foot buffer from lot or right-of-way lines for “snow, drainage and landscaping.” Impacts from or considerations accounting for snow, drainage and landscaping are not limited to a driveway’s entry and exit; logically, they must be considered for the entirety of a driveway’s length. Thus, read together, § 705(II)(A) reflects an intent to review the entire length of the driveway, including its narrowest point and buffer zones.

No aspect of § 705(II)(A) indicates any intent to limit review to the entry point or take off area of the driveway. Moreover, no aspect of § 705(II)(A) limits review to an existing portion of a driveway such that it would be inapplicable to an extension or spur to that driveway. The lack of ambiguity in § 705(II)(A) leaves room for no other interpretation.⁴

² This “corridor” is different than the traveled width of the driveway itself, which is addressed in other provisions of the Regulations, such as Regulations § 705(II)(B). The “corridor” addressed by Regulations § 705(II)(A) is akin to the area over which a driveway is proposed, beyond the traveled portion of the driveway itself.

³ In this interpretation, the Court notes that the “corridor” discussed in Regulations § 705(II)(A) and as defined above is not confined to a property’s boundaries. No aspect of this portion of § 705(II)(A) expressly requires a “corridor” to be limited to a subject properties’ boundaries. Instead, a property’s boundaries or right of way lines are relevant when considering the 5-foot buffer that must be provided for “snow, drainage and landscaping.” Regulations § 705(II)(A). The DRB, however, in its limited interpretation of § 705(II)(A) did not make factual findings of what constituted the “corridor” here as defined by the Court in this Decision.

⁴ Further, the DRB’s interpretation would appear to render § 705(II)(A) mere surplusage in a majority of instances. In all zoning districts in the Town, the minimum lot frontage is longer than 30 feet. See Regulations §§ 622(II)(A), 623(II)(A), 624(II)(A), 625(II)(A). In all but two commercial or mixed-use districts, there is a minimum

Finally, Applicant argues that the Court should afford the DRB's interpretation deference in this case. A DRB's interpretation of a zoning bylaw is entitled to some measure of deference "if it is reasonable and has been applied consistently." See In re Carrigan Conditional Use & Certificate of Compliance, 2014 VT 125, ¶ 10, 198 Vt. 438 (2014); In re Maple Tree Place, 156 Vt. 494, 499–500 (1991) (interpretation by a zoning board "can be determinative in a close case."); In re Korbet, 2005 VT 7, ¶ 10, 178 Vt. 459 (2005) ("[T]he weight to be accorded . . . depends on the explanation of a 'reason or rationale for its decision' and a demonstration that the interpretation has been consistent.") (quoting In re Chatelain, 164 Vt. 597, 598 (1995) (mem.)). This Court has been presented with no evidence showing that the DRB has adopted a consistent interpretation of Regulations § 705(II)(A).⁵ The DRB is therefore not entitled to deference in this case.

Thus, the DRB erred in its interpretation of Regulations § 705(II)(A) as applying to the entry of the driveway alone. Based on this conclusion, the Court answers each Question in Appellants' Statement of Questions in the negative.

Conclusion

For the foregoing reasons, the Court concludes that the DRB erred in its interpretation of Regulations § 705(II)(A) and denying Appellants' appeal based on this interpretation.

Furthermore, the DRB made no specific factual finding on the corridor's narrowest width because of its previous interpretation of the Regulations. Because this is an on-the-record appeal, the Court cannot independently make this finding before the DRB. Further, because this factual question is the crux of this appeal and whether the permit can be issued, we cannot determine whether the application does or does not comply with Regulations § 705(II)(A) in the first instance. Thus, this matter is **REVERSED** and **REMANDED** to the DRB to make a final determination on this application consistent with this Decision. On remand, the DRB is directed to make a factual determination as to what the "corridor" of land on which Applicant proposes to construct the driveway is and what its width is at its narrowest point then issue a ruling based on those factual

front setback. Id. While conceivable that not all driveways will have an entry point along a properties' front line, it can be reasonably assumed that the vast majority will. To adopt the DRB's interpretation that § 705(II)(A) only applies to the entry point of a driveway would mean that every conforming lot and structure would definitionally comply with § 705(II)(A) rendering the 30-foot requirement surplusage. In re Jenness, 2008 VT 117, ¶24, 185 Vt. 16. The Court will not adopt such an interpretation.

⁵ What's more, the record seems to establish that, at least the Zoning Administrator initially believed that this application did not comply with Regulations § 705(II)(A) and further internal discussions were required to determine an interpretation of the provision. Transcript 21:19–22:4. This strongly indicates that no consistent interpretation of this provision has been established.

determinations and consistent with this Court's interpretation of Regulations § 705(II)(A) set forth herein.

This concludes the matter before the Court. A Judgment Order accompanies this Decision.
Electronically signed August 24, 2026 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
Superior Court, Environmental Division