

VERMONT SUPERIOR COURT
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ENVIRONMENTAL DIVISION
Docket No. 26-ENV-00040

Woodstock Resort Corp. Demolition Denial

DECISION ON MOTION

In this matter, Woodstock Resort Corporation (Appellant) appeals a March 23, 2026 decision of the District #3 Environmental Commission (District Commission) denying its application to demolish two single-family residences at its property located at 14 and 16 South Street, Woodstock, Vermont (the Property). Presently before the Court is Appellant's motion for partial summary judgment. Wendy Wright Marrinan, Phillip Neuberg and Robert Pear (together, Intervenors) and the Land Use Review Board (LURB) have also appeared in this matter. Presently before the Court is Appellant's motion for partial summary judgment on the issue of whether Act 250 Rules, Rule 34(E) is applicable to the pending application. Intervenors and the LURB oppose the motion.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). In determining whether there is a dispute over a material fact, "we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A). The party opposing a motion for summary judgment "cannot simply rely on mere allegations in the pleadings to rebut credible documentary evidence or affidavits . . . but must respond with specific facts that would justify submitting [their] claims to the factfinder." Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. (citing Gore v. Green Mtn. Lakes, Inc., 140 Vt. 262, 266 (1981); V.R.C.P. 56(e); State v. G.S. Blodgett Co., 163 Vt. 175, 180 (1995)).

Factual Background

We recite the following facts solely for the purpose of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts a trial. Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem).

1. Applicant owns 14 and 16 South Street, Woodstock, Vermont.
2. On April 14, 2009, Appellant received Land Use Permit #3W0568-3 (the 2009 Permit).
3. The 2009 Permit authorized Appellant to construct a building and courtyard, relocate a historic barn, demolish a historic home, and create and redesign garden and common spaces. See Ex. 1.
4. The 2009 Permit imposed “Condition 19” which stated:

The permittee shall maintain for future use the buildings at 16 South Street and the Beach House [14 South Street]. In addition to current maintenance work, the permittee shall:

- a. routinely inspect, at least annually, the interior, including attics and basements, and exterior of the buildings, to identify any deterioration or damage to the structures;
- b. address and repair in a timely and appropriate manner, any deterioration or damage identified during the routine inspections;
- c. submit future plans for demolition, relocation, or rehabilitation of either building to the Division and the Commission for review, comment, and approval; and
- d. submit a copy of the routine inspection report to the Division and the Commission by May 1st of each year, starting in 2010.

Id. at 3-4.

5. Condition 19 relates to the two subject buildings in the pending appeal. The “Beach House” is located on 14 South Street and the other building is located on 16 South Street.
6. The 2009 Permit was not appealed.
7. In 2025, Appellant applied for approval to demolish two single family homes subject to Condition 19 at the Property.
8. On March 23, 2026, the District Commission denied Appellant’s amendment application concluding, in relevant part, that the application was barred by Act 250 Rules, Rule 34(E).
9. Appellant timely appealed that decision to this Court.

Discussion

Appellant raises three Questions in its Statement of Questions. The pending motion concerns only Question 1. Question 1 asks “[w]hether the Amendment Application is barred by [Act 250 Rules,] Rule 34(E)?” Statement of Questions (filed Apr. 20, 2026). The pending motion presents two arguments as to why Appellant asserts Rule 34(E) is inapplicable to its application such that the

application cannot be barred by Rule 34(E). First, it asserts that the application is submitted in compliance with Condition 19, and therefore, is not one for amendment of the condition itself but a permit amendment generally and submitted specifically to comply with Condition 19. Second, it argues that Condition 19 is too vague to be enforceable as a “critical permit condition” under the rule.

As stated in Fact ¶ 4 above, Condition 19 states in full that:

The permittee shall maintain for future use the buildings at 16 South Street and the Beach House. In addition to current maintenance work, the permittee shall:

- a. routinely inspect, at least annually, the interior, including attics and basements, and exterior of the buildings, to identify any deterioration or damage to the structures;
- b. address and repair in a timely and appropriate manner, any deterioration or damage identified during the routine inspections;
- c. submit future plans for demolition, relocation, or rehabilitation of either building to the Division and the Commission for review, comment, and approval; and
- d. submit a copy of the routine inspection report to the Division and the Commission by May 1st of each year, starting in 2010.

2009 Permit at p. 3-4.

While Condition 19, generally, sets forth a maintenance obligation relative to the subject buildings, it also explicitly contemplates that there may be a future plan/application for their demolition and requires Appellant to submit an application for approval if it wishes to seek demolition.¹ The Court concludes that Condition 19’s express contemplation of the specific application before the Court (i.e., demolition of the buildings that are submit to the condition as a whole) results in Rule 34(E) being inapplicable because Appellant is submitting an application that the Condition 19(c) requires submittal of.

Whether or not Condition 19 is critical, the first step in the analysis, is a determination of whether the present application seeks an amendment of the condition as a whole. See Act 250 Rules, Rule 34(E)(1) (“In reviewing any amendment application, the District Commission shall first determine whether the applicant proposes to amend a permit condition that was included to resolve

¹ The parties greatly dispute the level of maintenance of the subject buildings that is required under Condition 19. This dispute is both immaterial to the pending motion and does not appear to be before the Court. With respect to the former, Intervenor’s point to no law that requires consideration of whether an applicant has complied with a permit term when determining whether to apply the provisions of Rule 34(E). Thus, the dispute is irrelevant for the purposes of the pending motion. Second, the District Commission concluded that Applicant met the “minimum requirements” under Condition 19. Intervenor’s did not appeal that conclusion and Appellant does not raise issues related to this issue expressly or intrinsically in its Statement of Questions. As a result, the Court fails to see how it can determine in this appeal: a) what level of maintenance Condition 19 required, and; b) whether Appellant met that standard.

an issue critical to the issuance of the permit.”). “If the applicant does not propose to amend a permit condition that was included to resolve an issue critical to the issuance of the permit” the application may be considered on its merits. Act 250 Rules, Rule 34(E)(1)(a). Despite arguments to the contrary, Condition 19(c) is a part of the condition as a whole. Intervenor, and to some extent the LURB, would have the Court bifurcate or otherwise ignore aspects of Condition 19, notably subsection (c). Thus, they would ascribe Condition 19(c) functionally “boilerplate” meaning. While it is true that not every permit condition is “critical,” In re Scott Farm Act 250, No. 148-11-17 Vtec, slip op. at 6 (Vt. Super. Ct. Envtl. Div. Aug. 6, 2018) (Walsh, J.), Intervenor provide no support for their assertion that aspects of a permit condition can be read separately from some of its own terms. The condition, critical or not, must be read together.

While Rule 34(E) is intended “to ensure that the grant of an Act 250 permit is not ‘merely a prologue to continued applications for permit amendments,” In re Waterfront Park Act 250 Amendment, No. 138-9-14 Vtec, slip op. at 5 (Vt. Super. Ct. Envtl. Div. May 8, 2015) (Walsh, J.) (quoting In re Stowe Club Highlands, 166 Vt. 33, 39 (1996)), Condition 19(c), by its terms, both anticipates and requires the submittal of a narrowly defined future application for “demolition, relocation, or rehabilitation.” Thus, Condition 19 sets forth maintenance and reporting requirements for the subject buildings and then requires that Appellant submit for approval plans for “demolition, relocation, or rehabilitation.” Appellant, by submitting for review and approval an application for demolition, is complying with Condition 19 and not seeking to amend its terms. Thus, Rule 34(E) is not applicable to the pending application.

In reaching this conclusion, the Court notes that it is the level of specificity within Condition 19 and subpart (c) that requires this conclusion. Condition 19 sets forth a specific obligation to maintain and, by extension, not demolish, the subject buildings. It then internally contemplates a specific future application that could be submitted that would directly relieve Applicant of its maintenance obligations under the condition (i.e., demolish what it was to maintain or relocate or rehabilitate those structures). This is distinct from a permit that generally sets forth conditions and then contains catchall language that amendment of the permit would require approval.² It is further

² Thus, this condition’s language is dissimilar from that in In re Green Mountain Dog Camp, LLC. In Green Mountain Dog Camp, this Court applied Rule 34(E) and the Stowe Club Highlands analysis to an application seeking a permit amendment where the condition required an applicant to finalize a forest management plan and that “[t]he completed plan shall be binding on all affected lot owners during the life of this permit and any proposed changes in the plan shall be submit to prior Commission review and approval in the form of an amended land use plan.” No. 24-ENV-00005, slip op. at 8 (Vt. Super. Ct. Envtl. Div. Oct. 2, 2024) (Walsh, J.). The condition at issue that case included only a general catchall that “any proposed changes” required amendment and approval. Condition 19 in this case specifically

distinct from a version of Condition 19(c) that does not refer to demolition and instead only references “relocation or rehabilitation.” It is the fact that the at-issue condition contains the express term for the application before the Court that dictates this result.

Importantly, the Court notes that nothing about this conclusion eliminates Appellant’s need to obtain approval of its demolition application on its merits. Intervenor’s assert without support that Appellant is attempting to demolish the subject buildings without approval. The LURB appears to also categorize Appellant’s application as an argument that it can demolish the subject buildings “as a right.” The Court disagrees with these assertions. Clearly Appellant is not asserting that it can demolish these buildings without Act 250 approval via a permit amendment. In fact, Appellant is before the Court pursuing an amendment application to obtain such Act 250 permitting for the demolition. It has not in this appeal argued, nor has the Court concluded, that Condition 19(c) means that it is free to demolish the subject buildings absent such approval. This Court’s conclusion simply means that Appellant’s application may be reviewed on its merits without first having to go through a Rule 34(E) analysis.

As a result, Rule 34(E) is inapplicable to the application before the Court. The application therefore cannot be barred by Rule 34(E)’s terms and, instead, the application may be reviewed on the merits. Thus, the material facts are not in dispute and Appellant is entitled to judgment as a matter of law on Question 1. Appellant’s motion is **GRANTED**.³

Conclusion

For the foregoing reasons, the material facts are not in dispute and Appellant is entitled to judgment as a matter of law on Question 1. In so doing, we conclude that Appellant’s application is not subject to Act 250 Rules, Rule 34(E) because the 2009 Permit and Condition 19 as a whole expressly contemplates a future application for demolition such as the one before the Court. The application may therefore be reviewed on the merits. Appellant’s motion is therefore **GRANTED**.

states that Appellant must submit plans for “demolition, relocation, or rehabilitation” for review and approval. Because Appellant has applied for one of these three identified deviations from Condition 19’s imposed terms, Rule 34(E) is inapplicable. If Appellant sought to amend its obligations under Condition 19 in a manner other than “demolition, relocation, or rehabilitation,” such an application would be more akin to the condition in Green Mountain Dog Camp, which generally concerned “any proposed changes.”

³ In reaching this conclusion, the Court need not adjudicate the parties’ dispute as to whether Condition 19, generally, is a critical permit condition under Rule 34(E). Nor does the Court need to adjudicate the parties’ dispute as to the relative weight and import of comments submitted by the Vermont Department of Historic Preservation (VDHP) regarding the interpretation of Condition 19 in connection with the 2009 Permit or the application on appeal. These comments might be relevant, however, when the Court conducts its ultimate determination on the merits of the application.

This result does not conclude the matter before the Court. Thus, the Court will concurrently set this matter for a status conference to discuss how best to move this case to resolution.

Electronically signed September 23, 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 stylized font. The "T" is large and loops around the "o". The "W" is also stylized with a large loop. The "a" is simple, and "lsh" follows in a cursive script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division