

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00053

166 Terra Lane Home Occupation Permit

ENTRY ORDER

Title: Motion to Strike/Dismiss (Motion: #3)

Filer: Carol and Brian Gates

Date: July 1, 2026

Memorandum in Opposition to Motion, filed July 24, 2026, by David W. Rugh, Esq.

The motion is DENIED.

In this matter, Brian and Carol Gates (Appellants) appeal an April 30, 2026 decision by the Town of Mendon (Town) Zoning Board of Adjustment (ZBA) upholding a January 20, 2026 Notice of Violation (the NOV) issued by the Town Zoning Administrator (the Zoning Administrator) to Appellants for operating a commercial cannabis business without a zoning permit at their property located at 166 Terra Lane, Mendon, Vermont (the Property). Presently before the Court is Appellants' motion to strike and/or dismiss through which Appellants request the court "strike all administrative fines and penalties imposed by the Town . . . via [the NOV]." Motion to Strike/Dismiss at 1. The Town opposes the motion.

Prior to addressing the procedural issues with the pending motion, it is important to explain where this alleged violation is in the broader context of the zoning enforcement process. At this point, the Town has issued the NOV, which puts the Appellants on notice of the alleged violation. Presently, Appellants have appealed that NOV to this Court. Through this appeal, Appellants can present arguments related to their Statement of Questions and assert that the NOV is improper. If they are successful in their appeal on the merits, the enforcement of this issue ends and there can be no administrative fines and penalties stemming from this NOV. If Appellants are not successful, then the NOV stands and the Town may proceed to the second enforcement phase in a separate and subsequent action whereby the Town could seek a Court order imposing fines and penalties. The date of the NOV and the cure period is relevant for the calculation of those fines and penalties in that

second action should it occur. At this point, however, no administrative fines or penalties have been assessed against Appellants related to the violation set forth in the NOV. There are therefore no fines to “strike” or “dismiss.”

Moving to the substance of the pending motion, Appellants motion cites to no procedural rule pursuant to which their motion is made. If the Court uses the motion’s title as guidance, the Court looks to both Vermont Rules of Civil Procedure (V.R.C.P.) Rule 12(f), concerning motions to strike, and V.R.C.P. 12(b), concerning motions to dismiss. Either Rule, however, makes little sense in the pending context. For example, with respect to the motion to strike, Rule 12(f) concerns motions to strike pleadings made in the litigation process. The pending motion does not request that the Court strike any pleading, but instead strike administrative fines associated with the NOV.¹ Similarly, V.R.C.P. 12(b)² would be inoperative to grant the relief requested. Rule 12(b) governs defenses to pleadings and relates to motions to dismiss various types of claims before a court. Again, the pending motion does not seek dismissal of any claim³ but instead seeks dismissal of any administrative fines or penalties. As noted earlier, the issues of fines and penalties that might flow from the issuance of the NOV is premature at this stage. Thus, both Rule 12(b) and 12(f) are not relevant to the requested relief.

Functionally, the pending motion is most akin to a motion for summary judgment whereby Appellants are arguing that they are entitled to judgment as a matter of law in this appeal and the NOV should be voided. This motion is made pursuant to V.R.C.P. Rule 56. To the extent that Appellants’ “Statement of Facts” is compliant with Rule 56, Appellants fail to meet their burden of proving and supporting their motion as many of their factual allegations are unsupported. See Price v. Leland, 149 Vt. 518, 521 (1988) (noting that the burden of proof in a Rule 56 motion is on the moving party).

Thus, having presented no authority for the Court to “strike” or “dismiss” these alleged fines, or the NOV itself, at this stage of the appeal, the motion is **DENIED**. In reaching this conclusion, the Court does not adjudicate the merits of the arguments in the motion. By way of a weather report, however, there are concerns with the arguments Appellants have raised. To aide efficient resolution of the matter before the Court, the Court provides the following weather report without deciding the merits of this appeal.

¹ Some aspects of the pending motion, addressed below, seem to request that the Court strike or dismiss the NOV itself.

² The Town categorizes the pending motion to dismiss as either V.R.C.P. 12(b)(1) or 12(b)(6). For the reasons set forth herein, the Court concludes that Rule 12(b) is irrelevant based on the content of the motion.

³ Notably, the sole “claim” before the Court is Appellants’ own appeal of the NOV itself.

First, Appellants assert that the NOV is deficient and violates procedural due process because it did not attach a “Home Occupation Permit Application” or provide the criteria required to obtain such a permit under the Town of Mendon Zoning Regulations (the Regulations).⁴ Section 4451(a) of Title 24 sets forth the required content in a notice of violation. Provision of an application and a full analysis of the criteria required for issuance of a relevant permit is not required.

Next, Appellants argue that the Town cannot pursue this violation pursuant to the doctrines of laches or equitable estoppel because the Town had been aware of Appellants activities for 3 years.⁵ Appellants have not provided sufficient analysis about how this knowledge meets either standard, including the 5-element test applied when pursuing a claim of equitable estoppel against the government as set forth in In re Langlois/Novicki Variance Denial, 2017 VT 76, ¶¶ 12-13. Further, the Court notes that municipalities have 15 years from the date a violation first occurred to bring enforcement. See 24 V.S.A. § 4454(a) (setting for the applicable statute of limitations). While the Court does not have sufficient information to establish when the cannabis operation first occurred, this statute of limitations may have an impact on whether either doctrine applies.

Next, Appellants assert that 24 V.S.A. § 4412(4) functionally prohibits regulation of home occupations. They overstate this provision. Section 4412(4) states that:

No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

Section 4412(4) does not prohibit municipalities from regulating home occupations through local zoning. Here, the NOV alleges that Appellants have an unpermitted home occupation and directed Appellants to cure that home occupation by seeking and obtaining a zoning permit. The Regulations do not prevent a landowner from having a qualifying home occupation but they do require such home occupations be permitted. Appellants fail to provide an understanding of how the requirement that they obtain a zoning permit for a home occupation violates § 4412(f).

⁴ Appellants assert that the NOV is somehow improper because the Town does not maintain a “Home Occupation Permit” or a “Home Occupation Permit Application” such that it was impossible to cure the alleged violation. First, the NOV does not state that a “Home Occupation Permit Application” must be submitted such that it is unclear why Appellants assert that this specific document is required. Second, review of the Regulations make clear that a “Home Occupation Permit” was not required but instead a zoning permit was required. The Town has available zoning permit applications online and at the Town’s offices. The NOV also cites the relevant provision of the Regulations establishing what permit is required. Thus, this argument seems to present no basis to void the NOV.

⁵ The Court notes that it is unclear whether this issue is properly raised in Appellants’ Statement of Questions.

Finally, Appellants assert that the ZBA erroneously applied the 2026 iteration of the Regulations when the 2010 iteration applies. They appear to assert that the ZBA's application of the 2026 Regulations is grounds to void the NOV. This appeal is heard de novo. 10 V.S.A. § 8504(h). As such, we hear the case "as though no action whatever has been held prior thereto." Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989). Therefore, we generally do not consider the underlying decision of, or proceedings before, the municipal panel below, "rather, we review the application anew as to the specific issues raised in the statement of questions." In re Whiteyville Props. LLC, No. 179-12-11 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Dec. 13, 2012) (Durkin, J.). That the ZBA applied the 2026 Regulations is therefore irrelevant. The NOV does not apply the 2026 Regulations and was issued when the 2010 Regulations were in effect.⁶ Thus, the Court agrees that the 2010 Regulations are applicable in this case. That the ZBA applied the 2026 Regulations does not present grounds to void the NOV.

For the foregoing reasons, Appellants' motion is **DENIED**. The parties have filed their dates of unavailability for a merits hearing in October and November. The Court will set this matter for hearing and final pretrial conference and separate notices will be served.

Electronically signed September 24, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" and the last name "Walsh" written in a cursive-like script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

⁶ The Court notes that under either iteration of the Regulations home occupations require a zoning permit.