

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 6-1-17 Vtec

McCormick Zoning Permit Denial

ENTRY REGARDING MOTION

Count 1, Municipal DRB Other (6-1-17 Vtec)

Title: Motion to Amend SOQ (Motion 1)

Filer: Hubert W. McCormick

Attorney: Edward D. Fitzpatrick

Filed Date: December 11, 2017

Response in Opposition filed on 12/29/2017 by Attorney Lafferty for the Town of Milton

The motion is DENIED.

The present appeal is of a December 21, 2016, decision by the Town of Milton (“Town”) Development Review Board (“DRB”) denying Hubert W. McCormick’s (“Appellant”) appeal of the Town Administrative Officer’s denial of a zoning permit to construct a single-family home in Milton, Vermont. The motion currently before the Court is Appellant’s motion to amend his Statement of Questions.

Appellants seek to add two questions regarding the applicability of the Uniformed Development Regulations the Town adopted on September 18, 2017 and a DRB decision granting various approvals to Appellant issued on September 15, 2017.

The Court reviews appeals *de novo*. 10 V.S.A. § 8504(h). Furthermore, the scope of our subject matter jurisdiction, and our review, is limited by the scope of the application that was considered by the appropriate municipal panel below. Werner Conditional Use, No. 44-4-16 Vtec, slip op. at 5 (Vt. Super. Ct. Envtl. Div. Aug. 31, 2016) (Durkin, J.) (citation omitted). The Court will only review issues raised before and considered by the appropriate municipal panel, or issues that could have been considered by the panel. See, e.g., In re Torres, 154 Vt. 233, 235 (1990). (“The reach of the superior court in zoning appeals is as broad as the powers of a zoning board of adjustment or a planning commission, but it is not broader.”); In re Maple Tree Place, 156 Vt. 494, 500 (1991) (“[I]t is beyond [the superior court’s] role as an appellate tribunal, even under *de novo* review standard, to start addressing new issues never presented to the planning commission and on which interested persons have not spoken in the local process.”).

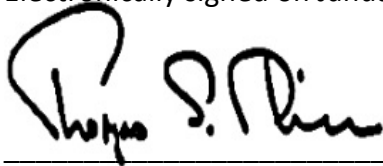
The DRB decision at issue in this appeal addressed the application Appellant submitted on August 15, 2016. At the time Appellant submitted that application, the Town’s Interim Zoning

Bylaws were in effect. The DRB did not review the application under the subsequently adopted Unified Development Regulations or the standards set forth therein, nor did the DRB review the application at issue in the decision subsequently issued on September 15, 2017. Therefore, these issues are outside the scope of our review as they are not relevant to the approval or denial of the permit presently on appeal. See Werner, No. 44-4-16 Vtec, slip op. at 5 (Aug. 31, 2016).

As the Court does not have jurisdiction to hear the issues raised in the proposed questions, Appellant's motion to amend the Statement of Questions is **DENIED**.

So Ordered.

Electronically signed on January 03, 2018 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Superior Judge
Environmental Division

Notifications:

Edward D. Fitzpatrick (ERN 3965), Attorney for Appellant Hubert W. McCormick
Corey F. Wood (ERN 6585), Attorney for Appellant Hubert W. McCormick
Amanda S. E. Lafferty (ERN 5113), Attorney for the Town of Milton