

Bond Case Briefs

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ZONING & PLANNING - VERMONT

In re Hopkins Certificate of Compliance

Supreme Court of Vermont - June 19, 2020 - A.3d - 2020 WL 3396443 - 2020 VT 47

Applicant sought change-of-use permit allowing him to use his residential property as a law office. Town's Development Review Board approved site plan, making specific note of applicant's agreement that line of evergreens planted to screen parking area would "consist of arborvitae" as requested by owner of abutting residential property, and issued change-of-use permit.

After Zoning Administrator (ZA) granted applicant a temporary certificate of compliance, and then a second after the first expired, Board determined that requirements for temporary certificate had not been met, except that arborvitae screen was in compliance, and ordered applicant to come into full compliance with permit and approved site plan.

Owner, proceeding pro se, appealed to the environmental division, and while appeal was pending, ZA issued applicant a final certificate of compliance. On the parties' cross-motions for summary judgment, the Superior Court, Environmental Division, dismissed action for lack of jurisdiction. Owner appealed.

The Supreme Court held that:

- There is no cause to engage in statutory construction with respect to the exclusivity-of-remedy and finality provisions of the Vermont Planning and Development Act;
- Owner's appeal from the second temporary certificate was appropriately characterized as a collateral attack on the final order and, thus, was barred by the Act;
- Exhaustion of owner's remedies was required, notwithstanding his futility argument;
- Owner's notice of appeal was insufficient to preserve the issue of the validity of the final certificate of compliance; and
- Those issues raised by owner in connection with the second certificate were moot.