
ZONING & PLANNING - VERMONT

In re Wright & Boester Conditional Use Application

Supreme Court of Vermont - October 15, 2021 - A.3d - 2021 WL 4806937 - 2021 VT 80

Applicants sought conditional use permit or variance from local development review board allowing applicants to demolish and rebuild lakeside structure on its existing footprint, adding a third level and increasing building's height by ten feet.

Board conditionally approved application, allowing rebuilding of structure to its original height of two stories. Applicants appealed to the Superior Court, Environmental Division, which granted permit based on revised application, and applicants' neighbors appealed.

The Supreme Court held that:

- Structure was a "boathouse," not an "accessory building," and
- Environmental Division should have remanded to local development review board.

Two-story lakeside structure, which was within 150 feet of lakeshore and which applicants sought to demolish and rebuild on its existing footprint while adding a third level and increasing building's height by ten feet, was a "boathouse," not an "accessory building," for purposes of local zoning ordinance limiting boathouses to 15 feet maximum height and accessory buildings to 30 feet; although structure had been used for more than storing boats, zoning ordinance's intent was to increase restrictions over time to protect lakeshore, boathouses were only new development permitted within 150 feet of lakeshore, and to conclude otherwise would allow any preexisting structure not fitting narrow definition of boathouse to be up to 30 feet high and increase burden on lakeshore.

Environmental Division should have remanded applicants' application to demolish and rebuild lakeside structure on its existing footprint, adding a third level and increasing building's height by ten feet, to local development review board, rather than granting conditional permit based on revised application, where revisions were major, implicating additional analyses the review board did not have occasion to consider, review board might have invoked comment from interested persons who had no objection to original plan, and because new proposal would shift structure much closer to existing septic system, which did not conform with local ordinances, and add a fiberglass ramp at the shoreline with the heavily regulated "shoreland buffer resource zone."

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