

TOWN of EAST MONTPELIER

P.O. Box 157
East Montpelier, VT
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C. Bruce Johnson, ZA
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November 6, 2014

Duane Wells
3 Pitkin Court
Montpelier, VT 05602

Re: Request for Reconsideration of ZA Denial of East Montpelier Zoning Application
14-057 to Construct Accessory Dwelling at 30 Cutler Heights
Parcel #04-003.000; Tax Map #08-03-40.000

Dear Mr. Wells:

On October 23, 2014 Attorney John Page submitted, on your behalf, a request that I reconsider my denial of your application to construct an accessory dwelling on your 30 Cutler Heights property. As I explained to you in person, after researching the issue and discussing the options with Town Attorney Bruce Bjornlund, I must decline the opportunity to reconsider my denial of your application.

As a preliminary matter, I am not 100% confident that a zoning administrator should, or even has the authority to, reconsider a formally delivered decision. Although Title 24 Chapter 117 of the Vermont Statutes clearly provides for the reconsideration of a decision by an appropriate municipal panel, it is silent on the issue of reconsideration of a decision by a zoning administrator. Similarly, the East Montpelier Land Use & Development Regulations provide no opportunity for a reconsideration of a zoning administrator decision.

As to the substance of Attorney Page's request, I am well aware of the concepts underlying the "successive application doctrine." Although your application for an accessory dwelling is similar in numerous respects to your previous application for a single-family dwelling, it is functionally different and was treated as such. My denial was not based on the application specifics, but rather on Judge Durkin's ruling in In Re: Wells Building Application; Docket No. 44-3-11 Vtec:

Accordingly, Applicant's request for authority to build new dwelling structures on his 3+/- acre parcel must be **DENIED** as a matter of law.

Conclusion

For the reasons detailed above, we **GRANT** the Town's motion for summary judgment, concluding that Applicant's property on Cutler Heights Road consists of

one 3+/- acre parcel and that his request to build additional dwelling structures must be denied as a matter of law.

In Re: Wells Building Application; Docket No. 44-3-11 Vtec; page 5 [emphasis original]

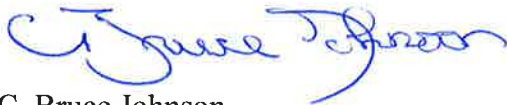
It may well be that Judge Durkin would consider my use of his ruling to the present application as, using Attorney Page's phrase, "overly-broad by far." However, as a zoning administrator bound to apply the regulations literally, I do not believe I have the authority to alter the clear meaning of Judge Durkin's words. Nothing in Attorney Page's letter changes my opinion on this issue.

Although I have declined to reconsider my decision, I will note that on October 27, 2014 you appealed my original decision to the East Montpelier Development Review Board. That appeal is set to be heard on December 2, 2014.

My denial of the request for reconsideration is, once again, a formal decision of the zoning administrator, so your right to appeal remains the same as for the previous decision: The rules pertaining to appeals of zoning administrator decisions are contained in East Montpelier Land Use & Development Regulations Section 7.5 and 24 V.S.A. §4465. As owner of the property, 24 V.S.A. §4465(b)(1) gives you the right to appeal my decision to the East Montpelier Development Review Board. 24 V.S.A. §4465(a) requires notice of any such appeal to be filed, within 15 days of the decision date, with the East Montpelier Town Clerk (in lieu of an elected secretary of the DRB), with a copy provided to the East Montpelier Zoning Administrator. The fee for an appeal of a decision by the zoning administrator is \$150.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



C. Bruce Johnson
East Montpelier Zoning Administrator