

TOWN of EAST MONTPELIER

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East Montpelier, VT
05651-0157

C. Bruce Johnson, ZA
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October 14, 2014

Duane Wells
3 Pitkin Court
Montpelier, VT 05602

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

Dear Mr. Wells:

On September 22, 2014 you submitted an application for an East Montpelier Land Use & Development Regulations (LUDR) Section 4.2 accessory dwelling on your property located at 30 Cutler Heights. Your property, a 2.7-acre lot bisected by Cutler Heights, currently has a single-family dwelling and accessory structures on the western portion of your parcel. The application (14-057) specifically requested permission to construct a 31' x 24' one-bedroom dwelling with a three-car garage on the portion of your lot located on the east side of Cutler Heights.

As I informed you by phone, there is a significant legal issue with your application. On September 26, 2011, Judge Thomas Durkin for the Environmental Division of the Vermont Superior Court issued a decision banning the construction of additional dwelling structures on your 30 Cutler Heights parcel. In Re: Wells Building Application; Docket No. 44-3-11 Vtec.

The procedural history of your application that led to Judge Durkin's decision can be seen by the following timeline:

- December 16, 2010: You submitted an application (10-082) to construct a new 1,800-square-foot single family house on the eastern portion of your 30 Cutler Heights parcel.
- January 11, 2011: East Montpelier Zoning Administrator Dina Bookmyer-Baker denied Application 10-082 on the grounds that the eastern portion of your lot is not a separate parcel and she lacked the authority to permit two dwellings on one parcel. A formal written decision was issued January 27, 2011.
- January 31, 2011: You appealed the decision of the Zoning Administrator to the East Montpelier Development Review Board.
- February 15, 2011: The DRB heard your appeal.
- March 11, 2011: The DRB issued a written decision upholding the Zoning Administrator's decision and denying your appeal.
- March 21, 2011: You appealed the DRB decision to the Environmental Division of the Vermont Superior Court.

- September 26, 2011: Judge Durkin issued a judgment order granting the Town of East Montpelier's motion for summary judgment and ruling that your request to construct a dwelling on the eastern portion of your parcel is denied. This decision was not appealed.

In his decision, Judge Durkin stated the following:

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]

There are many types of "dwellings" defined in the East Montpelier zoning regulations: accessory, multi-family, single family, and two family. Judge Durkin chose not to ban any particular type of dwelling. Instead, he banned all new dwelling structures. This decision was not appealed and is binding on the town. I do not have the power to alter the clear meaning of Judge Durkin's words.

For the reason expressed above, it is my opinion, as East Montpelier Zoning Administrator, that you are prohibited from constructing an accessory dwelling on the eastern portion of your lot and I must deny East Montpelier Zoning Application 14-057. I have not considered the merits of your specific accessory dwelling request and the issue of whether your 31' x 24' design would be acceptable under the LUDR Section 4.2 standards remains an open question.

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