

*Acorn*

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A., Chapter 151

RE: Club 107  
Walter & Kenneth Marchuk by  
Frank F. Berk, Esq  
Mayer & Berk  
\*P.O. Box 67  
So. Royalton, VT 05068-0067

MEMORANDUM OF DECISION  
Application #3W0196-3-EB

On December 2, 1986, Club 107 filed an appeal of the District 3 Environmental Commission's decision dated October 31, 1986, denying an application for a permit for an outside deck and sign. On December 15, the Executive Officer of the Environmental Board sent a letter to the Applicant's attorney, Frank F. Berk, informing him that the appeal was untimely filed and would therefore be dismissed. An opportunity to submit an opposing memorandum of law to the Board was provided.

On December 30, 1986, the Applicant filed a Motion for Extension of Appeal Period and a supporting memorandum of law. The Applicant argues that the Board has the authority to grant the Applicant an extension of the appeal period, pursuant to V.R.A.P. 4, and that an extension should be granted because the Applicant was unaware that the Board's rules differ from the Vermont Rules of Civil Procedure which provide for three extra days to papers to be filed which are mailed. The Applicant further believes that an extension is warranted because the appeal was mailed from South Royalton on November 26 and the Applicant justifiably expected it would reach the Board in one or two days.

Decision

\* As explained in the December 15 letter to Mr. Berk, 10 V.S.A. § 6089 and Board Rule 40 provide that appeals from district commission decisions must be filed within 30 days of the decision. Neither the statute nor the rules provides for extensions of the 30 day limit. Unless the statute so provides, the Board is without jurisdiction to accept an appeal filed after the 30 day appeal period. See Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975), in which the court stated: "Holding as we do that the [Employment Security] Board has no inherent power to extend the statutory appeal period except where the statute so provides, . . . we do not reach the question of whether the existence of good cause was, or should have been, determined in the proceedings below . . . The Board below correctly held that it was without appellate jurisdiction, and without authority to extend the appeal period here involved. Its decision . . . must be affirmed." Id. at 169-70. See also the Board's Memorandum of Decision in Re: Puppy Acres Boarding Kennel, Application #2W0568-2-EB (October 11, 1985) as upheld by the Vermont Supreme Court on November 21, 1986.

Since the Board has no authority to extend the statutory appeal period provided in the statute, the Applicant's motion must be denied and the appeal must be dismissed.

ORDER

The Applicant's Motion for Extension of Appeal Period is hereby denied. The Applicant's appeal is hereby dismissed.

Dated at Montpelier, Vermont this 2nd day of February, 1987.

ENVIRONMENTAL BOARD



~~Darby Bradley, Chairman~~  
Ferdinand Bongartz  
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Roger N. Miller.