

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

RE: Adrian Lesage Findings of Fact, **Conclu-**
RD #6 Poor Farm Road sions of Law and Order
Milton, VT 05468 .. Land Use Permit #4C0433-5-EB
and
Pine Tree Commons Homeowners
Association
c/o Gerald Wilcox
R.D. #4
Milton, VT 05468

This decision pertains to an appeal filed with the Environmental Board ("the Board") on January 31, 1986, by the Pine Tree Commons Homeowners Association from District #4 Environmental Commission's Findings of Fact, Conclusions of Law and Land Use Permit #4C0433-5 dated January 7, 1986. This permit specifically authorizes the permittee to delete the carports and water storage tank and requires the installation of a four-foot high chain link fence with cedar trees planted five feet on-center at the previously approved 24 two-bedroom condominiums located west of McMullen Road in Milton, Vermont. Appellant objected to the installation of the chain link fence for safety reasons and because the cedars as approved will not resolve the problem of headlights shining into the neighbor's windows.

On April 1, 1986, the Board notified the parties of its intention to conduct the hearing in this matter by way of an administrative hearing officer pursuant to Board Rule 41 and 3 V.S.A. § 813. Hearings were twice scheduled by the Board and, at the parties' request, postponed. Having heard no objection to the use of a hearing officer, Board Chairman Darby Bradley convened the public hearing in the appeal on May 12, 1986, in Milton, with the following parties participating:

Gerald Wilcox, President of the Pine Tree Commons
Homeowners Association
Adrian Lesage, Co-Applicant and former owner
Kathleen Kretzer, Adjoining Property Owner.

The hearing was recessed on May 12, 1986, after the parties reached an agreement regarding the proposed fence as outlined in the Findings of Fact below. The Chairman visited the project site immediately after the hearing. A proposed decision was issued by the Chairman on May 20, 1986. No party having requested the opportunity to present oral argument to the full Board, the Board conducted a deliberative session in this matter on June 4, 1986. On that date the Board determined the record complete and adjourned the matter. The matter is now ready for decision.

I. Issues in the Appeal

The Pine Tree Commons Homeowners Association appealed Land Use Permit #4C0433-5 as issued by the District #4 Environmental Commission because it believed that the type of fence required to be installed by the Commission (a four-foot high chain link fence with an associated cedar hedge with five-foot high trees planted five feet on-center) would be unsafe for children in the area and that it would not provide adequate screening of the project from adjoining properties. The Association contended that the replacement of the carports with an inadequate fence would have an undue adverse effect on the area pursuant to Criterion 8 of 10 V.S.A., Chapter 151 (Act 250).

II. Findings of Fact

1. As originally approved by the District Commission, the two carport structures were to have been constructed adjacent to the project boundary with Kretzer property. These carports would have provided an effective screen between the condominium units and the adjoining residential property. They also would have provided an effective screen of most automobiles and their headlights at night.
 2. Without the carports, similar protection of the adjoining property can only be achieved by the construction of a screening fence.
 3. The parties agreed at the hearing to resolve the fencing/screening issue in the following manner. Adrian Lesage would install a four-foot high chain link fence, together with a cedar hedge, along the boundary of the Kretzer property. The fence would be placed six feet from the boundary line, and the hedge three feet from the boundary. The cedar hedge, which would consist of trees at least four feet high (after planting) planted 18 inches to two feet on-center, would provide an adequate screen.
 4. Co-permittee Lesage agreed to install this fence and hedge as soon as possible but no later than June 9, 1986. He also agreed to maintain the hedge and replace any dead, diseased or dying trees for one year after the date of installation. He also agreed to replace any unapproved exterior lighting with fixtures as approved by the District Commission by June 9, 1986.
 5. The Condominium Association agreed to maintain the hedge at a maximum height of eight feet.
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III. Conclusions of Law

We conclude that the revised fence as agreed to by the parties will protect the overall aesthetics of the area and will provide at least as an effective screen of the condominium project from the adjoining property as the originally approved carports. Consequently, by permit condition, the Board will require the installation of a fence with cedar hedge as described in our findings of fact to ensure that the aesthetics of the area are maintained.

IV. Issuance of Amended Land Use Permit

In accordance with these findings of fact and conclusions of law, we will issue Land Use Permit #4C0433-5-EB. The Board hereby incorporates as if fully set forth, and adopts as its own, those findings of fact and conclusions of law issued by the Commission which were not appealed and which were not affected by the Board's proceedings. The amended permit approves the project subject to conditions imposed by the Commission and not addressed in this appeal, and conditions reflected in our findings and conclusions.

Based upon the foregoing findings of fact and conclusions of law, it is the conclusion of the Board that the project described in amendment application #4C0433-5, if completed and maintained in accordance with the terms and conditions of that application, the exhibits presented to the Commission and the Board by the Applicants and the Conditions set forth in Land Use Permit #4C0433-5 as amended by Land Use Permit #4C0433-5-EB, will not cause or result in a detriment to the public health, safety or general welfare under the criteria set forth in 10 V.S.A. Section 6086(a).

V. ORDER

Land Use Permit Amendment #4C0433-5-EB is hereby issued in accordance with the findings of fact and conclusions of law herein. Jurisdiction over this matter is returned to the District #4 Environmental Commission.

Dated at Montpelier, Vermont this 10th day of June, 1986.

VERMONT ENVIRONMENTAL BOARD



Darby Bradley, Chairman
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Dwight E. Burnham, Sr.
Jan S. Eastman
Samuel Lloyd