

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

RE: Bernard and Suzanne Carrier by Memorandum of
Robert P. Davison, Jr., Esq. Decision
P.O. Box 279 Motion to Alter
Stowe, VT 05672 Land Use Permit
Application
#7R0639-EB

This decision pertains to a Motion to Alter Decision filed by Bernard and Suzanne Carrier on October 17, 1990, from the Findings of Fact, Conclusions of Law, and Order issued by the Environmental Board on October 5, 1990 (the decision). In the decision, the Board denied **an** application for the creation of a nine-lot subdivision and related facilities on a 10.58 acre tract of land off Bigelow Bluff Road in Newport because it could not make positive findings with respect to 10 V.S.A. § 6086(a)(1)(F) (shorelines), (4) (erosion), (8) (aesthetics and scenic and natural beauty), and (9)(B) (primary agricultural soils).. On November 1, Bluffside Farms, Inc. and the **Scotts** filed an Opposition to Carriers' Motion to Alter Decision. The Board deliberated on November 7, 1990.

The Applicants request that the Board alter the decision with respect to the scope of review and consider the site as it existed on the date of the application rather than as it existed prior to the clearing and excavation that took place before an application was filed or a permit granted. The Applicants also request an opportunity to file additional evidence in response to the deficiencies identified in the Board's decision.

With respect to the first request, the Board reiterates its position stated in the decision:

Act 250 requires that a permit be obtained before commencing construction on a subdivision or development. 10 V.S.A. § 6081(a). If the Board were to review this application for compliance with the site as it existed after it was **cleard** and terraced, some developers **would** be encouraged to commence development without filing an application for an Act 250 permit, thereby reaping an economic advantage by getting a head start on construction.

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Rather than being punitive, as the Applicants assert, the policy of the Board and district commissions to review applications based upon the site prior to any construction, whether or not construction has already commenced, based upon the clear statutory mandate that a permit is required prior to development activity. Further, the Board's interpretation is designed to provide consistency and fairness to the review process, so that all applicants are treated similarly.

With respect to the request to provide additional evidence in response to the deficiencies identified in the decision, the Board refers the Applicants to 10 V.S.A. § 6087(c) and Board Rule 31(B). Section 6087(c) provides that an applicant may apply to the district commission for reconsideration of a permit denial within six months of the denial. Rule 31(B) states, in pertinent part, that "[a]n applicant for a permit which has been denied by the board or district commission may, within six months of the date of that decision, apply to the district commission for reconsideration of his application." Unless the Board specifically retains jurisdiction to review minor changes in a project, it consistently requires applicants who wish to present additional evidence in response to a permit denial to file a reconsideration request pursuant to 10 V.S.A. § 6087(c) and Rule 31(B) with the appropriate district commission. See, e.g., Re: Berlin Associates, #5W0584-9-EB, Memorandum of Decision (Apr. 24, 1990); Re: Sherman Hollow, Inc., #4C0422-5-EB (Revised), Findings of Fact and Conclusions of Law and Order at 12-13 (Feb. 17, 1989).

Accordingly, the Applicant's Motion to Alter Decision is denied.

Dated this 17th day of December, 1990.

ENVIRONMENTAL BOARD



Stephen Reynolds, Chairman
Ferdinand Bongartz
Arthur Gibb
Charles Storrow
Philip Wagner