THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2018-0214, Christine Cornelius v. Town of Atkinson, the court on May 15, 2018, issued the following order:

Rule 7(1) of the Supreme Court Rules requires that a notice of appeal be filed in this court within thirty days from the date on the clerk's written notice of the decision on the merits. A timely filed post-decision motion stays the running of the appeal period. An untimely filed post-decision motion does not stay the running of the appeal period unless the trial court waives the untimeliness within the appeal period. In the absence of an express waiver of the untimeliness made by the trial court within the appeal period, the appeal period is not extended even if the trial court rules on the merits of an untimely filed post-decision motion. Successive post-decision motions filed by a party that is not a newly losing party will not stay the running of the appeal period. See Rule 7(1)(C).

The clerk's written notice of the trial court's decision affirming the decision of the Town of Atkinson Zoning Board of Adjustment is dated December 19, 2017. In order to be timely, a post-decision motion needed to be filed in the trial court on or before December 29, 2017. Christine Cornelius's motion for clarification was filed in the trial court on or after January 17, 2018. On January 30, 2018, the trial court denied the motion for late entry of the motion for clarification and also denied the motion for clarification. It appears that Christine Cornelius then filed two more motions in the trial court, which were denied on March 23, 2018 (date of the clerk's notice).

Consequently, an appeal by Christine Cornelius should have been filed on or before January 18, 2018; her untimely and successive motions in the trial court following the December 19, 2017 decision did not stay the running of the appeal period. The motion for an extension of time to file a notice of appeal was filed in this court on April 23, 2018, and thus was untimely filed.

Accordingly, the motion for an extension of time to file a notice of appeal is denied. See Rule 21(6).

In light of the denial of the motion for an extension of time, the court waives the filing fee. Christine Cornelius's motion to waive the filing fee is therefore moot.

Motion for extension of time to file appeal denied.

This order is entered by a single justice (Lynn, C.J.). See Rule 21(7).

Eileen Fox,
Clerk

Distribution:
Rockingham County Superior Court, 218-2017-CV-00259
Honorable David A. Anderson
Ms. Christine Cornelius
Sumner F. Kalman, Esq.
Dona Feeney, Esq.
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2018-0214, Christine Cornelius v. Town of Atkinson, the court on June 20, 2018, issued the following order:

Supreme Court Rule 22(2) provides that a party filing a motion for rehearing or reconsideration shall state with particularity the points of law or fact that she claims the court has overlooked or misapprehended.

We have reviewed the claims made in the plaintiff's motion for reconsideration and conclude that no points of law or fact were overlooked or misapprehended in the decision denying her motion for an extension of time to file an appeal. Accordingly, upon reconsideration, we affirm the May 15, 2018 decision and deny the relief requested in the motion.

Relief requested in motion for reconsideration denied.

Lynn, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Rockingham County Superior Court, 218-2017-CV-00259
Honorable David A. Anderson
Ms. Christine Cornelius
Sumner F. Kalman, Esq.
Dona Feeney, Esq.
Allison R. Cook, Supreme Court
File

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The State of New Hampshire

ROCKINGHAM COUNTY SUPERIOR COURT

Christine Cornelius

v.

Town of Atkinson

218-2017-CV-00259

ORDER

Plaintiff Christine Cornelius, proceeding *pro se*, has filed what is effectively her third motion for reconsideration, asking the Court to "follow" the Americans with Disabilities ("ADA") law and consider new evidence.

At the June 5, 2017 hearing, Plaintiff was given the accommodation of reading materials rather than arguing extemporaneously to the Court. During that hearing, this Court informed Plaintiff that it did not view her pleading as having filed a formal ADA claim against the Town and during an extended colloquy Plaintiff did not confirm that she wanted to pursue an ADA claim in this action. Moreover, Plaintiff did not amend her complaint to add a formal claim against the Town under the ADA or present any evidence of an ADA violation by the Town at either hearing before this Court. Accordingly, there is no pending ADA claim in this case.[1]

As for her attempt to submit new evidence, this Court on September 22, 2017, allowed Plaintiff to submit a binder of documents that she claimed she intended to

[1] It would not be appropriate to combine an ADA claim with an appeal of a Zoning Board of Adjustment ("ZBA") decision. Any ADA claim would have to be filed in a separate action. The Court does not view this order or any prior order as barring Plaintiff from filing a separate ADA claim.

NONE OF THIS ORDER MAKES SENSE. ATTORNEY FEENEY CONFUSED THE JUDGE INTO THINKING THIS CASE REGARDED ADA VIOLATIONS OF THE TOWN.

submit at the June 5, 2017 hearing. In response to her first motion for reconsideration, the Court also scheduled a second hearing, in part to explore issues raised by the documents in her binder.

The Court issued its final order in this case on December 18, 2018 affirming the ZBA's decision in its entirety and also denying the Plaintiff's first motion for reconsideration (the Court's July 27, 2017 order affirmed the ZBA order in part -- Plaintiff's first motion for reconsideration focused on that order). On January 17, 2018, plaintiff filed a motion for clarification, which was essentially a second motion for reconsideration. The Court denied that motion. On that same date, she also sought leave to again submit new evidence. The Court denied this request, noting that she had previously been allowed to expand the record.

Plaintiff is now again seeking the opportunity to submit new information. This request is DENIED. In ZBA appeals, the superior court is not required to accept any new evidence. Here, Plaintiff has been given ample opportunity to support her argument that the ZBA erred.

Plaintiff's motion to "follow" the ADA, and more specifically the relief requested therein, is DENIED.

So Ordered.

1/20/18
Date

David A. Anderson
Associate Justice

* THE ADA VIOLATIONS ARE OF THE COURT WITH REGARD TO THE BINDERS AND CAUSE OF THE NEED FOR LATE ENTRY.

The State of New Hampshire

ROCKINGHAM COUNTY SUPERIOR COURT

Christine Cornelius

v.

Town of Atkinson

218-2017-CV-00259

ORDER

Plaintiff Christine Cornelius, proceeding *pro se*, appealed a decision of the Town of Atkinson (the "Town") Zoning Board of Adjustment (the "ZBA") denying her appeal of a November 16, 2016, decision of the Town's Code Enforcement Officer that concluded a commercial property abutting Plaintiff's residence complied with its site plan and the Town's screening and landscaping regulations. Following a hearing on June 5, 2017, the Court issued an order on July 27, 2017, affirming the ZBA's application of the Town's regulations, but remanding to the ZBA for further consideration of the issue of the commercial property's compliance with its site plan. On August 10, 2017, Plaintiff requested the Court reconsider the portion of its order affirming the ZBA's decision. On September 22, 2017, the Court issued an order on Plaintiff's motion to reconsider in which it admitted — over the objection of the Town — a binder of documents prepared by Plaintiff and submitted along with her motion. Based on this evidence, as well as Plaintiff's arguments, the Court concluded a hearing would be helpful to clarify certain issues. The Court subsequently held a hearing on Plaintiff's motion for reconsideration on October 13, 2017. Meanwhile, on September 13, 2017, the ZBA held a hearing and

rendered decisions regarding the issues remanded to it in the Court's July order. On October 25, 2017, Plaintiff filed a memorandum generally contesting the ZBA's conclusions. For the following reasons, the Court DENIES Plaintiff's motion for reconsideration and AFFIRMS, in whole, the ZBA's decision to deny Plaintiff's appeal of the Town's Code Enforcement Officer's November 16, 2016, decision.

Plaintiff's Motion to Reconsider

Principally, and consistent with her arguments to the ZBA and in her initial appeal, Plaintiff contends the Town's regulations require steps be taken to modify the screening between her property and that of an abutting business. More specifically, Plaintiff maintains that an existing row of white pines no longer sufficiently blocks her view of the business because the trees have shed their lower branches as part of their natural life cycle. In her initial appeal, Plaintiff cited sections 690:1, 690:2. 690:3, 690:4, 6180:1, 6180:2, and 6180:6 of the Town's zoning regulations to support her position. The Court concluded in its July order that Plaintiff had not sufficiently demonstrated that the ZBA acted unreasonably or unlawfully in interpreting or applying these regulations.

Nevertheless, seemingly relying on her own interpretation of section 690:2 of the Town's ordinances, Plaintiff continues to argue that "[t]he belief that the ordinances simply require trees be healthy and maintained is absurd." Mot. to Recons. ¶ 15. Section 690:2 provides in pertinent part:

> The screened area shall serve as a visual and noise barrier and be densely planted with shrubs or trees which are at least three (3) feet high at the time of planting and are of a type which may be expected to form a year-round dense screen at least five (5) feet high within three (3) years. . . . The plant material shall be maintained in a healthy condition.

As explained in greater detail in the Court's July order,[1] contrary to Plaintiff's position, this ordinance does not require that an owner replace or supplement healthfully maintained plantings to ensure they continuously offer the same level of noise and visual screening throughout their life cycle. Instead, it predominately requires that screening: (1) serve as a visual and noise barrier; (2) be densely planted using plantings at least three feet high; and (3) be comprised of a plant-type expected to form a year-round dense screen at least five feet high within three years of being planted.

There is no suggestion in the record that the row of white pines were not densely planted. Regarding whether the white pines serve as a visual and noise barrier, in its July order, the Court concluded the applicable provision of the Town's regulations does not require that screening act as a complete visual and noise barrier and that the ZBA did not act unreasonably or unlawfully by relying on observations of its own members in concluding that the white pines served as an adequate visual and noise barrier. Although Plaintiff has submitted photographs demonstrating the white pines do not entirely block her view of the abutting business and she alleges that the ZBA members only examined the screening from the abutter's property, as opposed from the perspective of her residence, the Court is not convinced that its original decision was in error. *See Lone Pine Hunters' Club, Inc. v. Town of Hollis*, 149 N.H. 668, 670 (2003) ("The review by the superior court is not to determine whether it agrees with the zoning board of adjustment's findings, but to determine whether there is evidence upon which they could have been reasonably based." (quotation and brackets omitted)).

Lastly, regarding the issue of whether the white pines "are of a type which may be expected to form a year-round dense screen at least five (5) feet high within three (3)

[1] *See* discussion on pages nine and ten.

years," the Court indicated in its September order that, based on certain evidence Plaintiff submitted, it appeared that the Town Planning Board may have been on notice prior to the planting of the screening several decades ago that the white pines were *not* expected to satisfy this requirement. At the subsequent hearing, however, Plaintiff's arguments did not squarely address this issue and it is not apparent from the record that Plaintiff argued to the ZBA that white pines cannot, under any circumstances, be expected to form a year-round dense screen. Therefore, the Court cannot say, based on the record before it, that the ZBA acted unlawfully or unreasonably when it concluded that the white pines in this case satisfied the Town's ordinances. Accordingly, Plaintiff's motion to reconsider is DENIED.[2]

Issues Considered on Remand

In New Hampshire, there are two avenues for appealing a decision of a planning board depending upon the nature of the claim. *See Atwater v. Town of Plainfield*, 160 N.H. 503, 508 (2010). Pursuant to RSA 676:5, III, if a planning board renders "any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section." Otherwise, pursuant to RSA 677:15, I, "[a]ny persons aggrieved by

[2] The Court notes that Plaintiff raises several arguments in her motion to reconsider that she failed to make either to the ZBA or in her initial objection. The Court chooses not to address these issues. *See Appeal of Morton*, 158 N.H. 76, 79 (2008) (citing *Mt. Valley Mall Assocs. v. Municipality of Conway*, 144 N.H. 642, 654–55 (2000) for the proposition that a "party cannot raise an issue for the first time in a motion for reconsideration when the issue was readily apparent at the time the party initially filed for relief"); *Mt. Valley Mall Assocs.*, 144 N.H. at 655 ("It is in the interest of judicial economy to *require* a party to raise all possible objections at the earliest possible time . . . ." (emphasis in original)); *see also Caisee Nationale De Credit Agricole v. CBI Indus.*, 90 F.3d 1264, 1270 (7th Cir. 1996) ("Reconsideration is not an appropriate forum for rehashing previously rejected arguments or for arguing matters that could have been heard during the pendency of the previous motion.").

any decision of the planning board concerning a plat or subdivision may present to the superior court a petition, duly verified, setting forth that such decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within 30 days after the date upon which the board voted to approve or disapprove the application . . ."

In her appeal of the Town's Code Enforcement Officer's decision, Plaintiff argued to the ZBA that the site plan of the business abutting her property did not conform to the conditions upon which the Town's Planning Board granted approval. The ZBA declined to consider whether the site plan failed to reflect the decisions of the Planning Board because the ZBA concluded that Plaintiff had waived her right to challenge the site plan's validity because she failed to timely appeal the Planning Board's decision. *See* C.R. at tab 7 page 6; *id.* at tab 13 pp. 4, 6. It was not apparent from the record, however, which statute the ZBA determined governed Plaintiff's right to appeal. Thus, the Court remanded to the ZBA, among other things, the question of whether Plaintiff had appealed a decision of the Planning Board pursuant to RSA 676:5, III. In other words, the ZBA was tasked with determining whether Plaintiff was appealing a decision of the Planning Board that applied or interpreted a Town zoning regulation.

On remand, the ZBA concluded "that the ZBA, in reviewing the approval of the site plan by the Planning Board, is not being asked to review a decision applying or interpreting a zoning ordinance but was merely considering the approval of a site plan." Sept. 13, 2017 ZBA Meeting Minutes at 10. The Court finds this conclusion reasonable based upon its understanding of the gravamen of Plaintiff's position. Essentially,

Plaintiff does not challenge the validity of the Planning Board's May 20, 2015, decision to grant conditional approval for the site plan of the commercial business abutting her property. Plaintiff instead alleges that the actual site plan does not accurately reflect the conditions of its approval and further claims the Planning Board improperly recorded the site plan with knowledge of these purported inaccuracies. Viewed in this light, it is apparent Plaintiff did not challenge a decision of the Planning Board applying or interpreting a Town regulation. The proper avenue for raising her objections to the Planning Board's alleged conduct would have therefore been a direct appeal to the superior court made pursuant to RSA 677:15, I, not an appeal to the ZBA and a subsequent appeal of the board's conclusions. As such, the ZBA did not err in declining to address Plaintiff's arguments regarding the validity of the site plan because it lacked jurisdiction to consider such claims. Accordingly, the Court now AFFIRMS the decision of the ZBA in its entirety.

Conclusion

For the foregoing reasons, the Court DENIES Plaintiff's motion to reconsider and AFFIRMS the decision of the ZBA.

So Ordered.

December 15, 2017
Date

David A. Anderson
Associate Justice

Additional material from this filing is available in the Clerk's Office.