ENC 1999-035

In re Janson

February 25, 1999

STATE OF VERMONT ENVIRONMENTAL COURT

Docket No. 54-3-98 Vtec

In re: Appeal of ELLEN JANSON

DECISION and ORDER

Ellen Janson appealed in Docket No. 54-3-98 Vtec from a decision of the Zoning Board of Adjustment of the Town of Shelburne denying her appeal of Building Permit No. 9798-83 relating to construction of a second floor and installation of heating within a detached garage. Appellant is represented by Liam L. Murphy Esq., Appellee-Applicants John C. and Barbara B. Giebink are represented by Christopher D. Roy, Esq. The Town is represented by Joseph S. McLean, Esq., but did not take an active role in briefing the motions for summary judgment. Both Appellant and Appellee-Applicants have moved for summary judgment in Docket No. 54-3-98.

The following material facts are not disputed. Appellee-Applicants own a residential 1.2-acre lot at 9 Ordway Road in the Rural 1 and Lakeshore Overlay zoning districts. Appellant owns the neighboring residence at 7 Ordway Road. The minimum lot size under the present zoning regulations is 5 acres. Appellee-Applicants' predecessors had obtained the necessary permit and had replaced an old one-story, 1320-square-foot camp within the 100' lakeshore setback, with a 2-story, 1980-square-foot house in 1992.

In Docket No. 199-12-97 Vtec, this Court ruled that a proposed one-story, 1444-square-foot (38' x 38') detached garage to be located at the head of the existing driveway, partially built into the slope of the hill, which met the 50' side yard setback to Appellant's property to the north and the 100' lakeshore setback requirements of the present zoning bylaws, qualified as an accessory structure and an accessory use to a permitted use. It therefore fell within a "permitted use" category. The Court based that decision in part on the fact that its intended parking and storage functions are subordinate to and incidental to the residential function of the principal structure on the lot. The decision in Docket No. 199-12-97 Vtec related to the application for a one-story garage with no heating, plumbing or wastewater services, and specifically did not address the permit application for the installation of a second floor in the building or for any plumbing, heating or residential use of the building.

The application in the present case proposes to install a carpeted wood floor in the interior of the garage at the eave line (which we will refer to for ease of reference as an "attic floor"), to install hot air heat to be fueled by gas or oil, and to use the space for storage and for a recreational area.(FN1) No exterior changes to the garage building are proposed. No plumbing or bathroom facilities are proposed in the application. The proposed floor would be 38' x 38' as it is supported by the exterior walls of the building, but given the slope of the roof, the attic floor space with six feet or more of headroom would be approximately 20' x 38' (760 square feet), and with eight feet or more of headroom would be approximately 14' x 38' (532 square feet).

During the ZBA hearing on February 2, 1998 on this application, Appellee-Applicant stated it was then his intention to install a water line to the garage for hot water heat, rather than to install hot air heat

as had been stated on the application, but stated that he had no other plans at that time for water in the garage. This Court may consider such modifications to an application as were contemplated by the ZBA when the matter was before it; therefore we will consider the application for the heating system to cover either hot air or hot water heat.

In order to be approved, the application to install the attic floor in the garage, to heat the space, to use it for storage, and to use it for "recreation," must be analyzed by the Court against the standards of an accessory structure for an accessory use. The Court has already ruled that the use of the building for storage is within the scope of the definition of accessory structure and accessory use. As to the storage, the only question is whether the construction of an attic floor and the heating of the storage space changes the result. We conclude that it does not. The storage use of the garage remains incidental to and subordinate to the residential use of the house, regardless of whether the storage space is heated, and regardless of whether the stored materials are stored on boards placed on the rafters or are stored in an attic space created by the proposed attic floor.

The only remaining issue is whether the proposed use of up to 760 square feet of the heated attic space for "recreation," without the use of any plumbing for that space, renders it other than an accessory structure or an accessory use. We conclude that without any water supply or waste disposal facilities in the garage, the use of up to 760 square feet of the heated attic space for recreational use by Appellee-Applicants' family or their guests, does not alter either the accessory nature of the structure or its accessory use. We also note that all uses of the property, whether located in the residence, the accessory structures, or outdoors on the property, must comply with the performance standards of the Zoning Bylaws.

Accordingly, Appellant's Motion for Summary Judgment is DENIED and Appellee-Applicants' Motion for Summary Judgment is GRANTED. The installation of an eave-level wood floor in the garage, for the purpose of recreational and storage use, as proposed and as approved in Building Permit No. 9798-83, is hereby APPROVED, with the condition that the space may be heated by a hot air or hot water heating system, but without any other water supply or wastewater disposal. This approval specifically does not allow any installation of any bedrooms, kitchens, bathrooms or plumbing of any kind (other than for a hot water heating system) in the garage, including but not limited to sinks, wet bars, lavatories, toilets, showers, or baths. This approval specifically does not allow any residential use of the garage, and does not allow any activity which would violate the performance standards found in §1660 of the Zoning Bylaws, including specifically the noise standards found in §§1660.1 and 1660.2(c) and the fire protection standards found in §§1660.1 and 1660.2(a). This approval specifically recognizes that any use of the second floor of the garage as an accessory apartment or for residential purposes would require conditional use approval and would have to meet the standards of §1810.2 of the Zoning Bylaws.

Done at Barre, Vermont, this 25th day of February, 1999.

Merideth Wright Environmental Judge

FN1. The word "etc." in the application does not expand the proposed uses. Appellee-Applicant's affidavit in the present case that he intends the recreational use of the space to be for his children also does not modify the application, as it is not reflected in the minutes of the ZBA hearings and therefore was not before the ZBA.