

Environmental Court Upholds Regulation of Siding

Over forty Vermont towns have adopted zoning bylaws to protect their community character and the trend continues to grow as more communities have come to appreciate the uniqueness of their surroundings and taken local action to protect the integrity of their downtowns and historic structures. A decision late last year by the Environmental Court upholds a municipality's right to regulate alterations to buildings within design control districts under 24 V. S. A. § 4414 (1) (E) and/or (F). *In re: Armour Siding Application* Env. Ct. Docket No. 134-7-05 Vtec. (December 18, 2006).

The Burlington case involves a property owner's request to install "high grade imitation wood grained vinyl siding to restore" a building listed on both the Burlington Register of Historic Resources and the Vermont State Register of Historic Resources. Because the structure, the George Jimmo House, is considered an "historic building," it is subject to design review criteria found in Burlington's bylaws. After hearing the application for the installation of the artificial siding and the recommendations of the advisory commission, the Burlington Development Review Board (DRB) denied the application.

The case then went *de novo* to the Environmental Court. The appeal was on two criteria articulated in § 6.1.10(a) and § 6.1.10(i) of Burlington's Ordinance: whether the use of artificial siding "to restore" the exterior of the structure would be "inharmonious with the architecture of existing buildings in the vicinity," and "whether his plan constitutes a disruption of the neighborhood's historic or traditional architectural features." In reaching its conclusion, the Court considered the following evidence: testimony on the existing condition of the siding and the process by which the artificial siding would be installed; a *Policy on the Application of Vinyl Siding & Substitute Façade Materials*, adopted by the DRB on 11/29/94; and the recommendations of the advisory commission. The Court also conducted a site visit to the neighborhood. The Court concluded "the application of vinyl to this structure will necessitate the removal and destruction of important historic components that cause it to relate harmoniously with nearby structures."

It should be noted that within the decision, Judge Durkin provided an alternate scenario where the court may have approved the installation of vinyl siding; "[I]f the property did not have these distinctive design features, including the distinctive moldings, cornish returns, and multi-sized shingles, vinyl siding might not have resulted in such a disruption and might have been permissible."

This highlights the need for towns interested in promoting their historically and architecturally significant structures to adopt bylaws that identify both acceptable treatments and replacement materials for such structures. The adoption of clear standards not only provides permit predictability and streamlines the review process for local zoning boards, but, as this case shows, also strengthens the defense of local decisions in court.

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