

VERMONT SUPERIOR COURT, ENVIRONMENTAL DIVISION

Corey Acres Rd. Variance & Change of Use Applications

Corey Acres Rd. Variance & Change of Use Applications · No. 25-ENV-00107 · Decided March 31, 2026

SUMMARY

The Vermont Superior Court, Environmental Division, ruled on the Village of North Bennington’s motion to dismiss the appellants’ Statement of Questions in an appeal involving variance and change-of-use applications. The court dismissed Questions 1, 6, and 11, recognized the voluntary withdrawal of Questions 5 and 10, and denied dismissal of Question 12 while requiring clarification. The court ordered the appellants to file a clarified Question 12 by April 14, 2026, and scheduled a later status conference.

CASE DETAILS

COURT	Vermont Superior Court, Environmental Division
WRITING FOR THE COURT	Thomas G. Walsh
JURISDICTION	Vermont Superior Court, Environmental Division
DECIDED	March 31, 2026
DOCKET	25-ENV-00107
DISPOSITION	other
PROCEDURAL POSTURE	The Village moved under Vermont procedural rules to dismiss the Appellants' Statement of Questions in a de novo environmental-division appeal from the Village Development Review Board's denial of variance-related applications.
STANDARD OF REVIEW	For a motion to dismiss under V.R.C.P. 12(b)(1), the court accepts uncontroverted factual allegations as true and construes them in the light most favorable to the nonmoving party. For a V.R.C.P. 12(b)(6) motion, dismissal is proper only when it is beyond doubt that no facts or circumstances would entitle the nonmoving party to relief. In the Environmental Division, appeals are generally reviewed de novo, but the court's jurisdiction is limited to issues properly presented to and within the authority of the municipal panel below.
PRECEDENTIAL VALUE	unknown
PARTIES	Ken Corey & Son, Edward Corey, Margaret Corey v. Village of North Bennington

TOPICS

motions to dismiss

subject matter jurisdiction

pleadings

zoning

appellate procedure

PRACTICE AREAS

land use and zoning

municipal law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Statement of Questions should be dismissed as untimely.
2. Whether Questions 1, 6, and 11 were outside the Environmental Division's jurisdiction because they sought rulings on matters unrelated to the variance applications and potentially requested advisory opinions.
3. Whether Questions 5 and 10 should be dismissed based on Appellants' withdrawal of the corresponding appeals.
4. Whether Question 12 should be dismissed because it appeared to challenge actions taken by the zoning administrator or DRB in a de novo appeal.
5. Whether Appellants should be required to clarify Question 12.

HOLDINGS

1. The court declined to dismiss the Statement of Questions solely because it was filed untimely, exercising its discretion not to dismiss under the circumstances because the questions were filed before the continued initial status conference and before the appeal moved forward in earnest.
2. In a de novo appeal from municipal permitting proceedings, the Environmental Division's jurisdiction is limited to issues concerning the application under review and matters properly warned and within the municipal panel's authority. Questions seeking rulings on unrelated property activity or agreements, rather than whether the underlying variance applications comply with applicable regulations, must be dismissed.
3. Questions 5 and 10 were dismissed because Appellants affirmatively withdrew the appeals associated with those permit applications.
4. The court denied the motion to dismiss Question 12 at that stage because it was unclear whether the question improperly sought review of lower-level actions or instead raised an issue affecting the court's jurisdiction. Appellants were ordered to file a clarified Question 12.

KEY QUOTATIONS

“A Statement of Questions is “subject to a motion to dismiss or clarify some or all of the questions.”” (1)

“The Statement of Questions before this Court “functions like a pleading to limit the issues that are to be heard on appeal.”” (2)

“It is outside the scope of this Court’s jurisdiction in this appeal of variance applications to rule upon whether some other activity on the Property complies with or is otherwise appropriate pursuant to an

agreement between the parties, where the agreement is not before the Court and was entered into approximately 20 years ago.” (4)

FACTUAL BACKGROUND

Appellants challenged the Village Development Review Board's denial of variance applications concerning structures, improvements, materials, a rope gate, continued property use, and pond work at property on Corey Acres Road. Their Statement of Questions included questions about relocating a rope gate, continued use under a certificate of occupancy, compliance with pond-work requirements, and whether the zoning administrator had approved an application before the DRB hearing. The questions did not identify applicable zoning-regulation provisions or explain how several issues related to the variance applications under review.

PROCEDURAL HISTORY

The Village Development Review Board denied various variance applications concerning property at 158 and 163 Corey Acres Road on October 14, 2025. Appellants timely appealed and filed a Statement of Questions on January 13, 2026. The Village moved to dismiss the Statement of Questions. The court dismissed Questions 1, 6, and 11, treated Questions 5 and 10 as voluntarily withdrawn, denied dismissal of Question 12, and ordered Appellants to clarify Question 12.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Appellants were directed to file a clarified Question 12 on or before April 14, 2026, explaining how the issue relates to the pending matter and the court's jurisdiction. If no clarification is filed by that date, Question 12 will be dismissed.

CASES CITED

- In re Union Bank, No. 7-1-12 Vtec, slip op. at 1 (Vt. Super. Ct. Env'tl. Div. Nov. 8, 2012)
- Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245
- Colby v. Umbrella, Inc., 2008 VT 20, ¶ 5
- Richards v. Town of Norwich, 169 Vt. 44, 48-49 (1999)
- Powers v. Off. of Child Support, 173 Vt. 390, 395 (2002)
- Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989)
- In re Whiteyville Props. LLC, No. 179-12-11 Vtec, slip op. at 1 (Vt. Super. Ct. Env'tl. Div. Dec. 13, 2012)
- In re Atwood Planned Unit Dev., 2017 VT 16, ¶ 12
- In re Maple Tree Place, 156 Vt. 494, 500 (1991)
- In re Transtar LLC, No. 46-3-11 Vtec, slip op. at 4 (Vt. Super. Ct. Env'tl. Div. May 24, 2012)
- In re Snowstone, LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28, 214 Vt. 587

- Baker v. Town of Goshen, 169 Vt. 145, 151-52 (1999)
- Wood v. Wood, 135 Vt. 119, 121 (1977)
- Choquette Zoning Permit Amendment, No. 199-9-08 Vtec, slip op. at 2 (Vt. Envtl. Ct. Jan. 7, 2009)

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