

STATE OF MAINE

YORK, ss.

SUPERIOR COURT  
CIVIL ACTION

DOCKET NO. AP-01-062  
PAF-YOR-5/10/2002

MARY V. CHASE,

Plaintiff/Appellant

v.

ORDER  
AND  
DECISION

DONALD L. GARSRECHT  
LAW LIBRARY

MAY 17 2002

TOWN OF YORK and  
YORK BOARD OF APPEALS,

Defendants/Appellees

Mary Chase, through her son Walter Chase, applied for a building permit for her house lot in York at 33 Eastern Avenue. Pursuant to the requirements of the Town of York, the plaintiff sought a shoreland permit from the York Shoreland/Inland Wetland Permit Review Committee. On June 20, 2001 the Committee voted to deny the requested permit for numerous reasons adequately stated in its Final Findings of Fact. The proposed home would be on a 5,564 square foot lot, which is well under the current 12,000 square foot minimum lot size, would be within 100 feet of a wetland and would result in the filling in of some wetlands.

Ms. Chase appealed the Committee's decision to the Board of Appeals and also sought a variance from it. After a hearing on September 12, 2001 the administrative appeal was denied by a 4-1 vote and the request for a variance was denied by a 3-2 vote. A review of the record presented, particularly the minutes of the hearing, indicates why the Board of Appeals rejected the administrative appeal.

A review of that decision indicates that the Board of Appeals did not commit error in denying the Administrative Appeal given, at least, the 100 foot wetland setback requirement.

It is more difficult to review the denial of the requested variance. It is clear that the requested variance was denied, but neither the minutes of the board's hearing nor the variance Schedule A attached to the Official Record of the Board of Appeals gives the Superior Court enough information to review.

In order to have a meaningful review of the denial of the request for a variance, this case will be remanded to the York Board of Appeals with the request that the Board state briefly in writing which, if any, of the four criteria for a variance were met and why each criteria was or was not met. It is not sufficient to suggest that the Board's decision and reasoning can be gleaned from reading the transcript of the September 12, 2001 hearing. The transcript consists of arguments made for and against the proposal and contains the questions and thoughts of individual Board members as they sorted through the case and sought a just result. None of the documents, however, clearly present exactly what the majority of the Board did and why they did it.

Two recent opinions of the Maine Supreme Judicial Court stress the importance of adequate findings by the local board or agency. See *Chapel Road Associates, L.L.C. v. Town of Wells*, 2001 ME 178 (December 27, 2001) and *Christian Fellowship & Renewal Center v. Town of Limington*, 2001 ME 16, ¶10-15, 769 A.2d 834, 837-9.

The entry is:

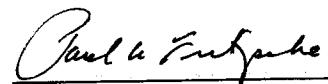
Appeal from the denial of the Administrative Appeal by the York Board of Appeals is denied. Denial of the Administrative Appeal is affirmed.

Remanded to the York Board of Appeals for further findings regarding the requested variance. Jurisdiction is retained by the Superior Court. The plaintiff shall submit any supplemental memorandum within 30 days after the further findings are filed with the Superior Court. The defendant may respond within 30 days after the plaintiff's submission and the plaintiff may submit its reply within 14 days thereafter. The matter will be decided without further oral argument unless further oral argument is requested.

Dated: May 10, 2002

PLAINTIFF:  
GREGORY J ORSO ESQ  
ERWIN OTT CLARK & CAMPBELL  
PO BOX 545  
YORK ME 03909-0545

DEFENDANT  
DURWARD W PARKINSON ESQ  
BERGEN & PARKINSON  
62 PORTLAND RD  
KENNEBUNK ME 04043



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Paul A. Fritzsche  
Justice, Superior Court

STATE OF MAINE

YORK, ss.

SUPERIOR COURT  
CIVIL ACTION

DOCKET NO. AP-01-062  
PAF - 101 - 1510 - 05

MARY V. CHASE,

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ORDER FOLLOWING  
REMAND

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OCT 18 2002

An order and decision of May 10, 2002 affirmed the denial of an administrative appeal but remanded the appeal from the denial of a variance to the York Board of Appeals for further findings. The Board, through separate statements from the three members who voted against granting a variance, has made its additional findings. The parties have submitted supplemental written arguments.

The statements of the three Board members make clear why a majority of the board denied a variance. In order to obtain a variance the petitioner must demonstrate that the strict application of the ordinance to the property would cause "undue hardship." "Undue hardship" requires the petitioner to establish, among other factors, that the need for the variance was due to the unique circumstances of the property and not to the general conditions in the neighborhood. See 30-A M.R.S.A. §435 3(4)(B) and *Waltman v. Town of Yarmouth*, 592 A.2d 1079, 80-1 (Me. 1991).

The majority of the Board had sufficient evidence to make its finding that the unique circumstances requirement was not met. There is no legal error in that finding and none of the other arguments of the plaintiff entitle her to any relief.

The entry is:

Decision of the York Board of Appeals denying a variance is affirmed.  
Judgment for the defendants.

Dated: October 16, 2002

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Paul A. Fritzsche  
Justice, Superior Court

PLAINTIFFS:

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