

MICHAEL ALBERT et al.

v.

TOWN OF POWNAL et al.

Argued December 4, 2019
Decided December 19, 2019

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Michael and Virginia Albert appeal from a judgment of the Superior Court (Cumberland County, *Mills, J.*) affirming, pursuant to M.R. Civ. P. 80B, a decision of the Town of Pownal Board of Appeals (the Board) in which the Board denied the Alberts' appeal of a certificate of occupancy issued to Vianna and Gabriel DiGristina for a building on the DiGristinas' property. Contrary to the Alberts' contentions, we discern no error of fact or law in the Board's issuance of the certificate of occupancy for an "accessory structure" pursuant to its determination that the DiGristinas are using the building as such, notwithstanding the Board's finding that the use simultaneously fell within the ordinance's definition of "accessory dwelling."¹ Pownal, Me., Definitions Ordinance (June 18, 2018); *see 21 Seabran, LLC v. Town of Naples*, 2017 ME 3,

¹ In general, an abutter may not challenge the issuance of a certificate of occupancy as a "substitute for an appeal of the underlying permit" so long as the permit is valid and the permittee has "complied with [its] terms." *Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶ 14, 788 A.2d 598. Here, however, the terms of the permit were ambiguous, as the Town acknowledged; the Alberts' appeal, therefore, did not violate the rule against collaterally attacking a building permit by later challenging the certificate of occupancy.

¶ 12, 153 A.3d 113; *Adams v. Town of Brunswick*, 2010 ME 7, ¶ 25, 987 A.2d 502; *Jordan v. City of Ellsworth*, 2003 ME 82, ¶ 9, 828 A.2d 768.

The entry is:

Judgment affirmed.

Kristin M. Collins, Esq. (orally), Preti Flaherty Beliveau & Pachios LLP, Augusta, for appellants Michael and Virginia Albert

Timothy E. Steigelman, Esq. (orally), Drummond Woodsum, Portland, for appellees Vianna and Gabriel DiGristrina

Natalie L. Burns, Esq. (orally), Jensen Baird Gardner & Henry, Portland, for appellee Town of Pownal

Cumberland County Superior Court docket number AP-2018-42
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