

TINA M. HALUSKA

v.

CITY OF OLD TOWN

Argued April 26, 2005
Decided April 29, 2005

Panel: SAUFLEY, C.J., and CLIFFORD,* RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Tina M. Haluska appeals from a judgment entered in the Superior Court (Penobscot County, *Mead, J.*), affirming a decision of the City of Old Town Zoning Board of Appeals upholding the code enforcement officer's denial of her building permit. Because Haluska's statement of the evidence in her motion for a trial on the facts, pursuant to M.R. Civ. P. 80B(d), was insufficient, the Superior Court did not err in denying the motion. *See Berube v. Town of Sanford*, 561 A.2d 1031, 1031-32 (Me. 1989). Furthermore, the court did not err in concluding that

* Although not available at oral argument, Justice Clifford participated in the development of this opinion. *See* M.R. App. P. 12(a) (stating that a "qualified justice may participate in a decision even though not present at oral argument").

her constitutional issue was unpreserved because she failed to raise it before the ZBA. *See New England Whitewater Ctr., Inc. v. Dep't of Inland Fisheries & Wildlife*, 550 A.2d 56, 58 (Me. 1988). Finally, the ZBA correctly determined that Haluska failed to meet her burden to prove that the nonconforming use of her property was grandfathered. *See Town of Levant v. Seymour*, 2004 ME 115, ¶ 22, 855 A.2d 1159, 1166.

The entry is:

Judgment affirmed.

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