

DOUGLAS R. CUSHING et al.

v.

TOWN OF BRISTOL

Submitted on Briefs May 29, 2008

Decided June 12, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER,
MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Douglas R. and Joan H. Cushing appeal from a judgment of the Superior Court (Lincoln County, *Horton, J.*) affirming the denial by the Town of Bristol Board of Appeals of the Cushings' administrative appeal from a decision of the Town Board of Selectmen. Contrary to the Cushings' contention, the Board of Selectmen did not abuse its discretion in deciding not to pursue further enforcement action against James and Leona Brackett for alleged violations of the town zoning ordinances on their property until the Cushings had provided a boundary survey of the properties at issue. Accordingly, the Board of Appeals properly denied the Cushings' appeal. *See Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 8, 750 A.2d 577, 581-82 (providing that the operative decision of a municipal body is reviewed directly for "error of law, abuse of discretion or findings not supported by substantial evidence in the record" (quotation marks omitted)); Bristol, Me., Land Use Standards Ordinance § 11(G)(3)(b)(2) (Mar. 8, 1993) (providing that the Board of Appeals may reverse a decision of the Board of Selectmen only where the decision was clearly contrary to ordinance provisions).

In addition, because the Cushings have not shown that the Board of Selectmen's decision resulted in the deprivation of a property interest or unequal

and discriminatory treatment by the Town, their due process and equal protection claims must also fail. *See Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 32, 856 A.2d 1183, 1193 (“In analyzing a due process claim that involves the deprivation of a property interest, courts must first determine whether the plaintiff was deprived of a protectable property interest”); *Aucella v. Town of Winslow*, 583 A.2d 215, 216 (Me. 1990) (providing that equal protection rights are implicated when similarly situated individuals are treated differently and there is a showing of intentional or purposeful discrimination).

The entry is:

Judgment affirmed.

Attorney for Douglas Cushing and Joan Cushing:

Hylie A. West, Esq.
Hylie A. West Law Offices
PO Box 1419
Damariscotta, Maine 04543

Attorney for the Town of Bristol:

Ervin D. Snyder, Esq.
Snyder & Jumper
PO Box 909
Wiscasset, Maine 04578