

LOUISA MINER et al.¹

v.

TOWN OF BENTON et al.

Submitted on Briefs July 8, 2009

Decided July 21, 2009

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

MEMORANDUM OF DECISION

Louisa Miner appeals from a judgment entered in Superior Court (Kennebec County, *Mills, J.*) affirming the decision of the Board of Appeals (BOA) for the Town of Benton, which upheld the issuance of a land use permit to Debra Hood by the Town's code enforcement officer. Contrary to Miner's contention, there was substantial evidence in the record to support the BOA's finding that Old Albion Road was not "discontinued" in 1949. *See Yates v. Town of Sw. Harbor*, 2001 ME 2, ¶ 10, 763 A.2d 1168, 1171 (stating that we review a challenge to a BOA factual finding for substantial evidence in the record). Additionally, although the BOA did not make specific findings about whether the CEO complied with the Town's ordinance in issuing the land use permit to Hood, the facts inferred from the record substantially support a finding of compliance. *See Wells v. Portland Yacht Club*, 2001 ME 20, ¶ 10, 771 A.2d 371, 375 (noting that when an agency's findings are insufficient to apprise us of the basis of the decision, we may consult the record where the subsidiary facts are obvious or easily inferred and a remand would be unnecessary).

Despite Miner's argument to the contrary, the record supports the Superior Court's finding that Miner failed to prove the element of detrimental reliance as part of her equitable estoppel claim. *See Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 34, 856 A.2d 1183, 1194 (listing the elements of equitable

¹ Plaintiffs had originally included James Morgan Miner who died on December 4, 2008.

estoppel). Last, the court did not err in denying Miner's request for a trial of the facts, *see Baker's Table, Inc. v. City of Portland*, 2000 ME 7, ¶ 9, 743 A.2d 237, 240-41 (explaining that a trial of the facts is appropriate when there are facts relevant to the resolution of the appeal that are not already in the record), nor abuse its discretion in dismissing Miner's separate claims for a declaratory judgment and injunction, *see Geary v. Stanley*, 2007 ME 133, ¶ 12, 931 A.2d 1064, 1067 (stating that we review orders managing pretrial proceedings deferentially for an abuse of discretion).

The entry is:

Judgment affirmed.

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