

LINCOLN ZBA EVIDENTIARY RULING
RE ADMISSION OF TESTIMONY
DATED JULY 12, 2022

1. An issue currently before the ZBA on appeal is whether the Zoning Administrator's approval of a Restricted Landing Area on the Clark property is permitted as an accessory use under Lincoln's Zoning Regulations.

2. Under the Regulations, an accessory use is one which is "customarily incidental and subordinate to the principle use and located on the same lot". Section 800.

3. Appellant cites the Environmental Court's decision of *Valois* and its interpretation of "customarily incidental" which focuses on the numeric quantity of single-family properties with landing strips within a geographic area of the subject property as the relevant inquiry.

4. The Appellant has also cited a Commonwealth of Pennsylvania case, *Riskier v. Smith Township Zoning Hrg. Bd.*, 886 A.2d 727 at 732 which analyzed similar language. It cited Webster's definition of "incidental" as meaning "being likely to ensue as a minor consequence." It then went on to address the potential impacts on abutting properties and whether those impacts could be considered "minor".

5. The Vermont cases involving accessory use which have been brought to the ZBA's attention thus far have not employed or imposed a "minor consequence" analysis on what constitutes an accessory use, although Vermont Courts have ruled that some proposed recreational uses are so diminimus as to fall outside the rudiments of zoning or land development altogether. Vermont Courts have tended to focus on the term "customarily" and the frequency or prevalence of the particular use in relation to the primary use. It is not, however, beyond the realm of possibility that the determination of whether a proposed use will have a "minor consequence" will be found to be relevant in determining whether the proposed personal landing strip at issue in this appeal qualifies as accessory.

6. The ZBA will, accordingly, take testimony from the Parties and Interested Persons as to whether a landing strip on the Clark's property in relation to the lands of Interested Parties will have more than an incidental or minor negative impact on those properties.

7. The ZBA will not, however, hear or take testimony concerning past experiences, good or bad, involving properties not directly involved in this appeal and from persons who are not interested parties to this proceeding. To the extent that any party is offering to provide such testimony, the ZBA will exercise its discretion and exclude it as, at best, marginally relevant to the appeal before it the probative value of which is substantially outweighed by the collateral and anecdotal nature of testimony involving properties which are unrelated to this appeal.