

[REDACTED]

of only 84.5 acres. Although a frustrated buyer in some circumstances may be compensated when a warranty deed does not deliver what it warrants, see Groetzinger, *Breach of the Warranty Covenants In Deeds and the Allowable Measure of Damages*, 17 N.H.B.J. 1, 7-11 (1975), relief is not available to one who knew the true state of affairs and had knowledge superior to that of the sellers. See *Burse v. Clement*, 118 N.H. 412, 415, 387 A.2d 346, 348 (1978); *Bergeron v. Dupont*, 116 N.H. 373, 375, 359 A.2d 627, 629 (1976). The record reveals no mutual mistake, fraud, misrepresentation, or unfair dealing. See *Ingaharro v. Blanchette*, 122 N.H. 54, 440 A.2d 445 (1982); *Mertens v. Wolfeboro Nat'l Bank*, 119 N.H. 453, 402 A.2d 1335 (1979); *Burse v. Clement*, 118 N.H. at 414-15, 387 A.2d at 347-48; *McCarthy v. Barrows*, 118 N.H. 173, 175-76, 384 A.2d 787, 788 (1978); *Colby v. Granite State Realty, Inc.*, 116 N.H. 690, 691-92, 366 A.2d 482, 483-84 (1976).

We find no error, and accordingly the order is

Affirmed.

BATCHELDER, J., did not sit; DOUGLAS, J., sat but did not participate in the decision.

[REDACTED]

Rockingham
No. 81-139

TOWN OF HAMPSTEAD

v.

VINCENT R. CAPANO, JR., & a.

February 19, 1982

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Andernacht & Hurd, of Plaistow (*Peter G. Hurd* on the brief), by brief for the plaintiff.

Casassa, Mulherrin & Ryan, of Hampton (*Peter J. Saari* on the brief), by brief for the defendant.

MEMORANDUM OPINION

The defendants appeal from a report and recommended decree submitted by Master *Mayland H. Morse, Jr.*, Esq., and approved by *Mullavey, J.*, granting the Town of Hampstead injunctive relief against the defendants. The order enjoins them from continuing construction of front steps and a sun deck which the zoning board of adjustment found to violate a Hampstead set-back requirement. The order also requires the defendants to remove the concrete deck and steps that have already been constructed.

The defendants assert that, although their construction violates zoning set-back provisions and they have not obtained a variance, they are not so altering the use of their structure as to place it outside the protection of RSA 31:62, which permits alterations to a structure as long as it is not used "for a purpose or in a manner substantially different from the use to which it was put before alteration." See *New London v. Leskiewicz*, 110 N.H. 462, 466, 272 A.2d 856, 860 (1970).

■ ■ We agree with the Capanos that the addition of front steps to their house is a permissible alteration. Without these steps, their only access to the house is over boulders and through a side door. Denial of permission to build an unobtrusive set of steps so that they can use the front entrance, would be arbitrary and unreasonable. See *Metzger v. Town of Brentwood*, 117 N.H. 497, 503, 374 A.2d 954, 958 (1977). Therefore, the relief granted by the trial court, prohibiting front steps in any form, sweeps too broadly. However, the elaborate entrance and sun deck erected by the



Capanos is a substantially different use, and the Capanos must either remove this part of the structure or obtain a variance.

Affirmed in part; reversed in part; remanded for modification of decree.



Rockingham
No. 81-155

MELVIN ROWE

v.

CITY OF PORTSMOUTH

February 19, 1982



Flynn, McGuirk & Blanchard, of Portsmouth (*John P. McGee, Jr.*, on the brief and orally), for the plaintiff.

Devine, Millimet, Stahl & Branch, of Manchester (*Lee C. Nyquist* on the brief and orally), for the defendant.

DOUGLAS, J. This workmen's compensation appeal raises the issue of whether the plaintiff, Melvin Rowe, presently is suffering from any cardiac disability that is causally related to an incident