

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-392

APRIL TERM, 2002

In re Appeal of Weston Boardman

}	APPEALED FROM:
}	
}	Environmental Court
}	
}	DOCKET NO. 240-12-99 Vtec
}	
}	Trial Judge: Merideth Wright
}	
}	

In the above-entitled cause, the Clerk will enter:

The Town of Hartford appeals from the environmental court's decision granting applicant Weston Boardman conditional use approval to operate a home industry towing, repairing, and inspecting motor vehicles. We affirm.

Applicant owns a 4.1-acre lot on a Class 3 dead-end road in a rural-residential area in the Town of Hartford. The property lies within the Rural Lands 5 zoning district, in which home industries are allowed as a conditional use under the Town's zoning regulations. The regulations define a home industry as the resident's use of the dwelling and/or land and accessory structures for a business or commercial operation. Located on the same road as the subject property are two other businesses, a tree farm and a four-child day care center.

For more than a decade prior to the present proceedings, applicant had been buying wrecked motor vehicles and then repairing, inspecting, and selling them at his home. A 1982 court order prohibited him from repairing or inspecting vehicles not owned by him. In 1997, applicant opened a body shop and repair business in White River Junction but continued to work on his own vehicles at home.

In September 1999, applicant applied for conditional use approval of a home industry towing, rebuilding, repairing, and inspecting wrecked vehicles, including vehicles owned by persons other than himself. The zoning board of adjustment denied the application based on its findings that the requested conditional use would adversely affect the rural, residential character of the area and the capacity of the road to safely accommodate expected traffic flows.

Applicant appealed the decision to the environmental court, which approved his application with conditions after reviewing it de novo. The court concluded that the additional estimated seven-to-ten vehicle round trips per day could be accommodated by the road without any adverse effect, and that the proposed business would not adversely affect the rural, residential character of the neighborhood as long as applicant adhered to permit conditions restricting the hours and scope of the operation. The Town appeals, arguing that the environmental court erred in ruling that the proposed use would not adversely affect the character of the neighborhood or the ability of the road to accommodate the added traffic. The Town contends that the type of use being permitted by the court is more appropriate for a commercial zoning district than a rural, residential district, as evidenced by the fact that gas stations, automobile repair shops, and junkyards are conditional uses in the Town's commercial zoning districts. According to the Town, the fact that the environmental court felt compelled to impose no less than ten conditions demonstrates that the proposed use is inappropriate for the district.

Generally, a proposed conditional use may be denied based on its presumed adverse effect only if the evidence reasonably demonstrates that the adverse effect will be substantial and material. In re Miller, 170 Vt. 64, 69 (1999). We will uphold the environmental court's determination as to whether there is a sufficient adverse effect unless the appealing party demonstrates that the decision is clearly erroneous. Id. Here, the Town fails to make such a showing. Notwithstanding its claim that applicant's business will require heavy-duty trucks to drive on the road adjoining the subject property, the Town has failed to undermine the court's conclusion that the road will be able to accommodate the additional seven-to-ten vehicle round trips per week that will result from the proposed use. The Town has also failed to demonstrate clear error in the court's determination that the proposed use, when limited by the court's conditions, will not adversely affect the character of the area. The conditions require applicant to limit the number and size of the vehicles on the premises, to screen from the road the dumpster and the vehicles being repaired, and to restrict the hours and scope of applicant's operation so as to minimize offensive noises. Given the conditions imposed, applicant's proposed use will not differ significantly from, and in some respects will be even more restricted than, his use of the property during the past fifteen years. In short, the Town has failed to demonstrate that the court's decision is clearly erroneous.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice