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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-003

OCTOBER TERM, 2007

In re Chandler Shed & Dwelling Applications	}	APPEALED FROM:
	}	
	}	Environmental Court
	}	
	}	DOCKET NO. 25-2-06 Vtec
		Trial Judge: Merideth Wright

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

Applicant Charles Chandler appeals the Environmental Court's decision, affirming the Town of Newfane's denial of his application for permits to renovate and build on his property. On appeal, applicant contends that the court erred in concluding that (1) his property does not meet the density requirements of the Town's bylaws to support both a residential and a commercial use, and (2) his property does not qualify as a home industry/occupation. We affirm.

At issue is whether applicant may renovate an existing building on his property and obtain approval for a shed built as an accessory to the residence. The property at issue is a 2.11-acre plot on route 30 in zoning district B of the Town of Newfane. In 2004, when applicant first inquired about the property, Corwin R. McAllister, the title holder at the time, had put a mobile home on the premises, which was used as a single-family residence. Applicant became interested in the property as a residence and center of operations for his electrical business, which he was operating out of his existing residence. Applicant is a master electrician and the owner of Chandler Electric Company, where his brother John Chandler works as a journeyman electrician. The business involves installing power lines and wiring electrical fixtures in customers' buildings. The business uses a home office where the employees can pick up materials and park the company trucks; however, no wiring or repair work is conducted at the site.

Applicant began negotiating to buy the property from Mr. McAllister in 2004. In September 2004, Mr. McAllister transferred the property to Phoenix Management Co., a trade name registered to Faye Carvalho, for which applicant was the registered agent. In March 2005, applicant's brother, John Chandler, began living on the property, and a sign was installed identifying the business of Chandler Electric Company, LLC. In March 2006, Faye Carvalho, on behalf of Phoenix Management, conveyed the property to herself and applicant.

Since March 2004, there have been several applications to construct new buildings on the sixty foot by forty foot property. In March 2004, Mr. McAllister submitted the first application for a zoning permit, requesting approval for construction of a "storage building." After several procedural hurdles, and following an amendment to the original application, the planning commission granted site plan approval, and the district coordinator issued an Act 250 permit for construction of a garage/ storage shed. The permitted structure was built some time between September 2004 and March 2005.

In March 2005, applicant applied for a zoning permit to relocate, renovate, or replace the existing mobile home. Applicant signed the application as both applicant and owner. The sketch plan labeled the new garage "shop," showed the existing mobile home and proposed a new location for the residence. The zoning administrator denied the application, explaining that the density limitations for zoning district B require two acres for a single-family dwelling and two additional acres for the any additional unit, including a commercial unit.

The denial explained that because the lot contains only 2.11 acres, no other use, beyond the existing commercial use, could be permitted. Applicant appealed the zoning administrator's decision to the development review board, which denied applicant's appeal. Applicant appealed this decision to the Environmental Court, but eventually withdrew this appeal.

In July 2005, applicant applied for another zoning permit to build a twelve foot by sixty foot storage shed behind the existing mobile home. Applicant then constructed a shed behind the shop. Because the location was different from the permitted location, the zoning administrator required a new application. Applicant then filed two applications, one to repair, replace, or renovate the trailer in its existing location, and the other to construct the already-built shed. The zoning administrator and the development review board denied these applications on the same basis as the previous application, explaining that because the property already had a commercial unit, any new residential structure would be considered a new unit and would require an additional two acres.

Applicant appealed to the Environmental Court. Following a site visit, the Court made the following findings regarding the property's use. The Environmental Court found that the mobile home is in 100% residential use and is occupied by applicant's brother, who is an employee of the Chandler electrical business. The shed is in 100% residential use for storage. The garage is used 50% for the business and 50% as an accessory to the residential use of the mobile home.*

The court concluded that under the Town's zoning bylaws, a 2.11-acre lot can support only one use, commercial, or residential. The court further concluded that because applicant did not reside on the property, it did not qualify for consideration as a home occupation or home

* Applicant does not challenge the court's findings that the property is being used for both residential and commercial purposes.

industry. Consequently, the court concluded that applicant's property did not have enough acreage to support both commercial and residential uses, and entered judgment for the Town.

On appeal, applicant brings two challenges to the Environmental Court's decision: (1) the court erred in concluding that the Town bylaws prevent the property from housing both residential and commercial uses; (2) the property qualifies as a home industry because applicant's brother lives on the property and is an employee of applicant's electrical business.

First, we consider whether the court properly interpreted the Town's bylaws. On appeal, "[w]e will uphold the environmental court's construction of a zoning bylaw 'if it is rationally derived from a correct interpretation of the law and not clearly erroneous, arbitrary, or capricious.' " In re Curtis, 2006 VT 9, ¶ 2, 179 Vt. 620 (mem.) (quoting In re Bennington Sch., 2004 VT 6, ¶ 11, 176 Vt. 584 (mem.)). In this case, we conclude that the Environmental Court's interpretation was rational and that the bylaws unambiguously require any residential or commercial unit to have at least two acres of land. In re Armitage, 2006 VT 113, ¶ 3, __ Vt. ___ ("We review the Environmental Court's interpretation of zoning ordinances and findings of fact for clear error.").

Under the zoning bylaws, the density limitations for zoning district B, wherein the property lies, require two acres for a single-family dwelling and two additional acres for any additional unit. Town of Newfane Bylaws § 5200.20. The minimum acreage for a commercial unit is the same as for a residential unit in the same zoning district. Id. § 4400.12. We agree with the trial court that based on the plain language of these requirements, applicant's lot cannot support two independent uses. As the court explained, nothing precludes applicant from using the property for solely residential or solely commercial purposes, but applicant does not have enough acreage to support both.

Next, we address applicant's argument that his property is exempt from the two-acre requirement because it qualifies as a home occupation. Both the statute and the bylaws include exceptions from bylaw requirements for home occupations conducted in one's residence. See 24 V.S.A. § 4412(4) ("No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located."); Town of Newfane Bylaws, § 4100.10 ("No provision herein shall infringe upon the right of any resident to use a minor portion of his dwelling for an occupation which is customary in residential areas and which does not change the character thereof."). The Environmental Court concluded that the statute requires the business to be operated by a resident of the property, and therefore applicant's business did not qualify because the present resident, applicant's brother, is an employee, not the owner, of the business.

On appeal, applicant contends that the Environmental Court erred in its interpretation of the statute and bylaw, claiming that its definition of home industry is too narrow, especially in requiring all owners to live at the same house. We reject applicant's assertion that his brother is an owner of the business. Applicant argued to this Court that the evidence showed that his

brother was an owner, but applicant failed to provide a transcript of the evidence before the Environmental Court so we must accept the findings of that court. As the court noted, the Electric Company is not an incorporated entity with multiple owners, but a business name under which applicant does business. Further, we conclude that the court's interpretation of the home-occupation sections was not clearly erroneous. See In re Curtis, 2006 VT 9, ¶ 2. The statute and bylaws do not require all owners to live in the same house, as applicant asserts; rather the home industry exception applies only to residents who operate a business, which they own.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice