

## **EXISTING SMALL LOTS MUST STILL CONFORM TO DIMENSIONAL REQUIREMENTS OF ZONING BYLAWS**

The Vermont Supreme Court once reasoned that the underlying policy rationale for the pre-existing small lot exception was “to provide that [undersized] lots whose existence predates the enactment of zoning but whose size does not quite comply with the new zoning law will not go to waste unused, but could be allowed to be developed for purposes consistent with uses permitted in the zone where located.” However, in the recent case *In re: Lake Carmi, LLC Conditional Use Application*, the Vermont Environmental Court made it clear that this exception does not absolve these lots from all other applicable dimensional requirements.

The case at issue involved a consolidated appeal of two adjoining parcels on Lake Carmi in Franklin owned by James and Mary Cameron. The Camerons had applied to the Franklin Zoning Board of Adjustment (ZBA) seeking a conditional use application to convert one of their existing seasonal residences to a year-round use. The Franklin ZBA denied their request citing that the parcel failed to meet the minimum lot size requirements. On appeal to Environmental Court, the Camerons contested that the change of use they sought was allowed because the parcel in question was an existing small lot.

Franklin’s zoning bylaws state that any land use in the district where the Cameron parcels are located, other than accessory uses in structures, must obtain conditional use approval. Specifically, section 330(C)(3) states that any parcel with a single family seasonal dwelling in the district must measure at least 14,000 square feet; year-round dwellings must be at least 40,000 square feet in size. The parcel in question (75 Dewing Road) was approximately 3,223 square feet in size. In keeping with state law on this matter (see 24 V.S.A. § 4406), Franklin’s bylaws allowed for the development of pre-existing small lots. The Environmental Court noted that if Franklin’s bylaws had established minimum lot sizes by zoning district – without consideration of the intensity of the proposed development – the Cameron’s proposed change of use would have been authorized. However, the bylaws tied a lot’s minimum lot size to the intensity of the intended use of the parcel. In other words, as the intensity of the development increased so did the minimum lot size necessary for approval.

The central question before the Court was whether pre-existing small lots were excused from all dimensional requirements. The Vermont Supreme Court’s holding in another case provided the answer stating that such an “extraordinary result would place ‘small lots’ in a situation of special and unique privilege not available to standard zoning lots in the district, and in derogation of the controlled use and growth concept of zoning.” Practically speaking, the Environmental Court acknowledged that affording the Cameron’s their relief would result in an absurd result, as they would be entitled to “an even greater intensity on their 12,800 square foot lot than would be afforded a lot that initially conforms to the size requirements for a single family seasonal dwelling...” within the same district. Consequently, the Environmental Court adopted the Supreme Court’s rationale that state law as it is concerned here “does not continue to operate to give such lots expanded privileges not available to standard lots in the [zoning district].”

While the take-away message of this case – that pre-existing small lots must still meet all other dimensional requirements of local zoning – may be obvious to most, it is worth repeating because often times when interpreting state law it is the most obvious question, but is one that never gets asked.

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