

TOWN OF CASTINE

v.

MAINE MARITIME ACADEMY

Argued September 17, 2009
Decided September 22, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, MEAD, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

The Town of Castine appeals from a judgment of the Superior Court (Hancock County, *Cuddy, J.*) declaring that Maine Maritime Academy's use of a property known as the Abbott House as a residence for its president does not violate the Town's zoning ordinance. Contrary to the Town's contention, use of the property as a residence does not become a post-secondary school use simply because the Academy owns it. *See Your Home, Inc. v. City of Portland*, 432 A.2d 1250, 1260 (Me. 1981) ("A municipal zoning ordinance . . . regulates land use. . . . A zoning ordinance is not ordinarily concerned with *title* to property." (emphasis in original)); *ABN 51st St. Partners v. City of New York*, 724 F. Supp. 1142, 1157 (S.D.N.Y. 1989) (discussing "fundamental . . . premise that zoning in the very nature of things has reference to land rather than to owner" (quotation marks omitted)); *Village of Valatie v. Smith*, 632 N.E.2d 1264, 1268 (N.Y. 1994) (citing "fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it." (quotation marks omitted)).

Construing the Town's zoning ordinance "reasonably with regard to both the objectives sought to be obtained and the general structure of the ordinance as a whole," *Gensheimer v. Town of Phippsburg*, 2007 ME 85, ¶ 8, 926 A.2d 1168,

1170 (quotation marks omitted), the Academy's use of Abbott House as its president's residence is properly categorized as a "one-family dwelling," which is an allowable use in the Village III District where it is located. If, as the Town speculates, the Academy uses the property for non-residential, institutional purposes in the future, then the Superior Court's judgment gives the Town recourse at that time.

The entry is:

Judgment affirmed.

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