

SUPREME COURT OF DELAWARE

Dewey Beach Enterprises, Inc. v. Board of Adjustment of the Town of Dewey Beach

1 A.3d 305 (Del. 2010) · No. No. 465, 2009 · Decided July 30, 2010

SUMMARY

The Delaware Supreme Court considered whether a proposed mixed commercial and residential development in Dewey Beach was subject to residential minimum lot-area requirements under the town's zoning code. The court held that the code's requirements for multifamily dwellings and residential multiunit structures did not apply to mixed-use structures absent an express restriction. The court reversed the Superior Court's judgment and remanded the matter.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Berger, Justice; Steele, Chief Justice; Holland, Justice
JURISDICTION	Delaware
DECIDED	July 30, 2010
DOCKET	No. 465, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Superior Court's affirmance of the Board of Adjustment's decision upholding denial of a building permit.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion
PARTIES	Dewey Beach Enterprises, Inc. v. Board of Adjustment of the Town of Dewey Beach

TOPICS

[zoning](#) [statutory interpretation](#) [municipal law](#) [administrative law](#) [appellate procedure](#)

PRACTICE AREAS

[zoning](#) [municipal law](#) [statutory interpretation](#) [administrative law](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether a proposed mixed commercial and residential structure in the Resort Business district is subject to the Zoning Code's minimum lot-area requirements for multifamily dwellings or residential multiunit structures.
2. Whether the Board of Adjustment's decision should be reversed because the building inspector allegedly had exclusive authority over the building permit or because the Board did not permit examination of the Town Solicitor.

HOLDINGS

1. A mixed commercial and residential structure is not a "multi-family dwelling" subject to the Zoning Code's minimum lot-area requirement because the Code defines a multifamily dwelling as a building used exclusively by two or more families, and the structure is not entirely residential.
2. The term "residential multiunit structure" refers to a structure that is entirely residential and does not include a mixed commercial and residential structure.
3. The appellant's arguments concerning the building inspector's authority and the Board's refusal to allow questioning of the Town Solicitor lacked merit and were moot; the Board's jurisdictional argument based on failure to join the Town of Dewey Beach also lacked merit because the Town's interests were aligned with the Board.

KEY QUOTATIONS

"Reading the Zoning Code as a whole, we conclude that residential lot size requirements do not apply to mixed use structures." (306)

"Where, as here, one definition (dwelling) expressly includes a portion of a building, and the other definition (multi-family dwelling) does not, the only logical conclusion is that the word 'building' in the definition of a multi-family dwelling means the entire building." (309)

"Thus, of the two possible interpretations of the term, it is more logical to assume that 'residential multiunit structure' means a structure that is entirely residential." (310)

FACTUAL BACKGROUND

Dewey Beach Enterprises sought to redevelop the Ruddertowne parcels in the Town of Dewey Beach's Resort Business district by adding a mixed commercial and residential structure to existing restaurants and an event center. The building inspector initially determined that the plan complied with applicable zoning requirements, but the Town Solicitor later concluded that it failed to meet the minimum lot-area requirements applicable to residential multiunit structures. The Board of Adjustment upheld the permit denial, and the Superior Court affirmed.

PROCEDURAL HISTORY

Dewey Beach Enterprises applied for a building permit to redevelop three parcels with a mixed commercial and residential structure. After the Town Solicitor advised that the project failed to satisfy minimum lot-area

requirements for residential multiunit structures, the Board of Adjustment upheld the permit denial. The Superior Court affirmed, and the Supreme Court of Delaware reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Superior Court was reversed and the matter was remanded for further action in accordance with the opinion. Jurisdiction was not retained.

CASES CITED

- Chase Alexa, LLC v. Kent County Levy Court, 991 A.2d 1148, 1151 (Del. 2010)
- Chase Alexa, LLC v. Kent County Levy Court, 991 A.2d 1148, 1152 (Del. 2010)
- Oceanport Industries, Inc. v. Wilmington Stevedores, Inc., 636 A.2d 892, 900 (Del. 1994)

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