

SUPREME JUDICIAL COURT OF MAINE

Wister v. Town of Mount Desert, 2009 ME 66

974 A.2d 903 (2009) · No. Han-08-547 · Decided July 7, 2009

SUMMARY

The Supreme Judicial Court of Maine held that Alberta Wister had standing to appeal a zoning board decision because she made a prima facie showing that she was an abutter. The court further held that the Mount Desert Zoning Board of Appeals had authority under 30-A M.R.S. § 4353 to grant a variance from a town-wide driveway setback requirement. The judgment vacating the variance was vacated, and the matter was remanded with instructions to affirm the board's decision.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Alexander, J.; Saufley, C.J.; Clifford, J.; Levy, J.; Silver, J.; Mead, J.
JURISDICTION	Maine
DECIDED	July 7, 2009
DOCKET	Han-08-547
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Moore and Carter appealed from a Superior Court judgment vacating the Mount Desert Zoning Board of Appeals' decision granting them a driveway setback variance.
STANDARD OF REVIEW	The court reviewed the ZBA's decision directly for abuse of discretion, errors of law, and findings unsupported by substantial evidence. Interpretation of statutes and local ordinances, including the scope of the ZBA's jurisdiction, was reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Maine
PARTIES	Benjamin C. Moore, Alice G. Carter v. Alberta Wister

TOPICS

- zoning
- municipal law
- judicial review of agency action
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Wister had standing to appeal the ZBA's variance decision to the Superior Court.
2. Whether the ZBA had jurisdiction under 30-A M.R.S. § 4353 to grant a variance from a driveway setback requirement contained in a town-wide land use ordinance.
3. Whether the ZBA's finding that strict application of the setback requirement would cause undue hardship was supported by substantial evidence.
4. Whether the variance was impermissibly broader than necessary because it covered the entire proposed driveway.

HOLDINGS

1. Wister had standing to challenge the variance because her statement that she was an abutter, identification of her property's location, and objection to construction below her house established a prima facie showing of standing, which Moore did not rebut.
2. A municipal board of appeals may consider and grant a variance from a setback requirement contained in a land use ordinance of town-wide application when the municipal ordinances authorize variance requests to be considered under 30-A M.R.S. § 4353.
3. The ZBA's finding that strict application of the driveway setback requirement would cause undue hardship was supported by substantial evidence.
4. The ZBA did not err or abuse its discretion by granting a variance covering the entire proposed driveway.

KEY QUOTATIONS

"Whether an ordinance is labeled as regulating "zoning" or "land use" or, as in the case of the Mount Desert ordinance, both, makes no difference in application of section 4353." (¶ 25)

"The reasonable return prong of the undue hardship test is met where strict application of the zoning ordinance would result in the practical loss of all beneficial use of the land." (¶ 30)

FACTUAL BACKGROUND

Moore and Carter owned a parcel accessible from Millbrook Road only through a twenty-foot-wide strip of land, and Moore also owned an adjoining landlocked lot accessible by a right-of-way over the first parcel. After Mount Desert amended its Land Use Zoning Ordinance to require five-foot driveway setbacks from property lines, the Code Enforcement Officer denied a permit for a fourteen-foot-wide driveway. The ZBA granted a hardship variance, finding that the lots could not yield a reasonable return without driveway access, that the hardship arose from unique property circumstances, that the variance would not alter the area's character, and that the hardship was not self-created. Wister, treated by the ZBA as an abutter, challenged the variance.

PROCEDURAL HISTORY

The Town's Code Enforcement Officer denied Moore's driveway permit because the proposed driveway could not satisfy the five-foot setback requirement. The ZBA granted a hardship variance under 30-A M.R.S. § 4353. Wister appealed under M.R. Civ. P. 80B, and the Superior Court vacated the ZBA decision and remanded for dismissal on the ground that the ZBA lacked jurisdiction. Moore and Carter appealed to the Supreme Judicial Court of Maine.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment was vacated, and the case was remanded to the Superior Court to affirm the decision of the Board of Appeals.

CASES CITED

- Gensheimer v. Town of Phippsburg, 2005 ME 22, ¶¶ 7-8, 868 A.2d 161, 163-64
- Franklin Property Trust v. Foresite, Inc., 438 A.2d 218, 220 (Me. 1981)
- Sahl v. Town of York, 2000 ME 180, ¶ 8, 760 A.2d 266, 268
- Rowe v. City of South Portland, 1999 ME 81, ¶ 4, 730 A.2d 673, 674-75
- Philbrook v. Theriault, 2008 ME 152, ¶¶ 20, 22, 957 A.2d 74, 78-79
- Sanborn v. Town of Sebago, 2007 ME 60, ¶¶ 6-7, 10-11, 924 A.2d 1061, 1063-65
- Thomas v. City of South Portland, 2001 ME 50, ¶ 2, 768 A.2d 595, 595
- Hodsdon v. Town of Hermon, 2000 ME 181, ¶ 3, 760 A.2d 221, 222
- Dickey v. Vermette, 2008 ME 179, ¶ 5, 960 A.2d 1178, 1180
- Jade Realty Corp. v. Town of Eliot, 2008 ME 80, ¶¶ 7, 9, 946 A.2d 408, 410-11
- Kane v. Commissioner of the Department of Health & Human Services, 2008 ME 185, ¶ 12, 960 A.2d 1196, 1200
- Town of Baldwin v. Carter, 2002 ME 52, ¶ 12, 794 A.2d 62, 68
- Lewis v. Town of Rockport, 2005 ME 44, ¶ 15, 870 A.2d 107, 111
- York v. Town of Ogunquit, 2001 ME 53, ¶ 12, 769 A.2d 172, 177
- Goldstein v. City of South Portland, 1999 ME 66, ¶¶ 1-4 & n.1, 728 A.2d 164, 164-65
- Camp v. Town of Shapleigh, 2008 ME 53, ¶ 9, 943 A.2d 595, 598
- Toomey v. Town of Frye Island, 2008 ME 44, ¶ 15, 943 A.2d 563, 567
- In re Melissa T., 2002 ME 31, ¶ 5, 791 A.2d 98, 99-100
- Tarason v. Town of South Berwick, 2005 ME 30, ¶ 8, 868 A.2d 230, 232
- Freeman v. Town of Southport, 568 A.2d 826, 828 (Me. 1990)

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