

SUPREME JUDICIAL COURT OF MAINE

Salisbury v. Town of Bar Harbor, 2002 ME 13

788 A.2d 598 (2002) · Decided January 29, 2002

SUMMARY

The Maine Supreme Judicial Court affirmed a Superior Court judgment upholding the Bar Harbor Board of Appeals' decision to vacate a certificate of occupancy and related orders concerning construction on Salisbury's property. The court held that issuance or denial of a certificate of occupancy is appealable when the construction meaningfully exceeds the authority of the underlying permit, and that the Board had jurisdiction to hear the abutters' appeal. The court also upheld rejection of Salisbury's independent equitable estoppel claim because he failed to present facts to the Superior Court and could not reasonably rely on unauthorized oral statements by a municipal official.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Saufley, C.J.; Clifford, J.; Rudman, J.; Dana, J.; Alexander, J.; Calkins, J.
JURISDICTION	Maine
DECIDED	January 29, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Superior Court judgment affirming the Bar Harbor Board of Appeals' decision vacating orders issued by the Code Enforcement Officer and rescinding a certificate of occupancy.
STANDARD OF REVIEW	The court reviewed questions concerning the Board's jurisdiction de novo. It reviewed factual findings underlying equitable estoppel for clear error and the application of equitable principles for abuse of discretion; because the Superior Court found that Salisbury had presented no facts supporting the estoppel claim, that conclusion was reviewed for clear error.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Jeffrey C. Salisbury, Trustee of the Jeffrey C. Salisbury Revocable Trust of 1994 v. Town of Bar Harbor, Hans P. Utsch, Susan L. Utsch

TOPICS

zoning

judicial review of agency action

administrative law

appellate procedure

civil procedure

PRACTICE AREAS

municipal law

real estate

administrative law

civil procedure

QUESTIONS PRESENTED

1. Whether the Bar Harbor Board of Appeals had jurisdiction to review the CEO's issuance of a certificate of occupancy.
2. Whether an appeal from a certificate of occupancy may challenge construction that meaningfully exceeds the authority granted by the underlying permit.
3. Whether the Superior Court erred by declining to adjudicate Salisbury's independent equitable-estoppel claim when he failed to present facts or invoke the required Rule 80B procedure.
4. Whether Salisbury could establish equitable estoppel based on alleged oral approval by the municipal code enforcement officer.

HOLDINGS

1. The issuance or denial of a certificate of occupancy is a decision subject to judicial review when an applicable law or ordinance authorizes review.
2. An appeal from a certificate of occupancy may not substitute for an untimely appeal from the underlying permit, but it may challenge the certificate when the permittee meaningfully exceeded the permit's authority or violated its conditions.
3. When equitable estoppel is presented as an independent claim alongside an administrative appeal, the Superior Court acts as a trial court on the estoppel claim, and the claimant must present relevant facts through the procedures required for developing that claim.
4. A claimant cannot establish reasonable reliance against a municipality based on an unauthorized oral approval by a municipal officer.

KEY QUOTATIONS

“We now hold that the issuance or denial of a certificate of occupancy is a decision subject to judicial review.” (602)

“An appeal of a certificate of occupancy may not, however, substitute for an appeal of the underlying permit.” (602)

“Thus, on the record before it, the court correctly concluded that there were no facts from which it could determine that Salisbury had met his burden of proof on the estoppel claim.” (603)

FACTUAL BACKGROUND

Salisbury owned a nonconforming waterfront parcel in Bar Harbor and obtained a permit to demolish and reconstruct a residence on the existing footprint. During construction, the neighboring Utsches alleged that the

new structure exceeded the ordinance's limits on expansion, and the CEO eventually issued and then revoked a stop-work order before issuing a certificate of occupancy. The Board of Appeals found that the new building exceeded the original footprint, added 473.5 square feet, and increased volume by approximately 60%, violating both the permit and the applicable ordinance. Salisbury also claimed that oral statements by the CEO supported equitable estoppel against the Town.

PROCEDURAL HISTORY

The Bar Harbor Code Enforcement Officer issued a building permit, later issued and revoked a stop-work order, and ultimately issued a certificate of occupancy for Salisbury's construction. The neighboring Utsches appealed the relevant CEO decisions to the Bar Harbor Board of Appeals. After an earlier Superior Court ruling determined that the Board had jurisdiction to hear the appeal, the Board held a consolidated hearing and determined that the construction exceeded the permit and violated the Bar Harbor Land Use Ordinance. Salisbury sought review under Maine Rule of Civil Procedure 80B and asserted an independent equitable-estoppel claim. The Superior Court affirmed the Board and rejected the estoppel claim because Salisbury had not presented facts or followed the required procedure for adjudicating that independent claim.

DISPOSITION

affirmed

CASES CITED

- Nugent v. Town of Camden, 1998 ME 92, ¶ 7, 710 A.2d 245, 247
- Bissias v. Koulovatos, 2000 ME 189, ¶ 6, 761 A.2d 47, 49
- Fitzgerald v. City of Bangor, 1999 ME 50, ¶ 10, 726 A.2d 1253, 1255
- City of Auburn v. Desgrosseilliers, 578 A.2d 712, 715 (Me. 1990)
- Herrle v. Town of Waterboro, 2001 ME 1, ¶¶ 10-11, 763 A.2d 1159, 1161-62
- Charlton v. Town of Oxford, 2001 ME 104, n. 8, 774 A.2d 366, 373
- Juliano v. Town of Poland, 1999 ME 42, ¶¶ 7-8, 725 A.2d 545, 548
- Stewart v. Town of Sedgwick, 2000 ME 157, ¶ 7, 757 A.2d 773, 776
- Baker's Table, Inc. v. City of Portland, 2000 ME 7, ¶¶ 11, 14, 743 A.2d 237, 241-242
- Shackford & Gooch, Inc. v. Town of Kennebunk, 486 A.2d 102, 103, 106 (Me. 1984)