

MASSACHUSETTS SUPREME JUDICIAL COURT

Wendy's Old Fashioned Hamburgers of New York, Inc. v. Board of Appeal

454 Mass. 374 (2009) · Decided July 24, 2009

SUMMARY

The Massachusetts Supreme Judicial Court reviewed the Billerica Board of Appeal’s denial of Wendy’s requests to modify a special permit and variance to allow a second site entrance. The court held that the Superior Court had jurisdiction to review the modification decisions and that the board’s stated reasons lacked adequate factual support under G. L. c. 40A, § 15. The court affirmed the order requiring issuance of the modified permit and variance because remand would delay an inevitable result.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| COURT                 | Massachusetts Supreme Judicial Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Marshall, C.J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | Massachusetts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | July 24, 2009                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | The Board of Appeal appealed from a Superior Court judgment that annulled the board's denials of Wendy's applications to modify a special permit and variance and ordered the board to permit a second entrance onto Pollard Street.                                                                                                                                                                                                                                                                                                                      |
| STANDARD OF REVIEW    | Under G. L. c. 40A, § 17, the Superior Court conducts de novo fact finding while giving substantial deference to a zoning board's legal interpretations and evaluation of land-use issues. The board's decision may be annulled when it rests on a legally untenable ground or an unreasonable, whimsical, capricious, or arbitrary exercise of judgment. On appellate review, factual findings are reviewed for clear error or lack of evidentiary support, while legal conclusions and zoning applications remain subject to highly deferential review. |
| PRECEDENTIAL VALUE    | Published Massachusetts Supreme Judicial Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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## PARTIES

Board of Appeal of Billerica v. Wendy's Old Fashioned Hamburgers of New York, Inc.

## TOPICS

zoning

judicial review of agency action

administrative law

standard of review

equitable relief

## PRACTICE AREAS

zoning

administrative law

municipal law

appellate procedure

remedies

## QUESTIONS PRESENTED

1. Whether the Superior Court had jurisdiction to review the board's denials of Wendy's applications to modify the special permit and variance despite Wendy's not having appealed the original 1992 one-entrance condition.
2. Whether the board's 1997 and 1999 decisions denying modification were valid when they stated only generalized conclusions and lacked specific factual support or adequate reasons.
3. Whether the Superior Court could order the board to issue the modified special permit and variance rather than remand the matter for further proceedings.

## HOLDINGS

1. The Superior Court had jurisdiction to review the board's denials of Wendy's applications to modify the special permit and variance because the applications were based on changed circumstances and constituted new decisions from which Wendy's timely appealed.
2. The board's decisions denying modification were invalid because they consisted of generalized statutory and regulatory conclusions unsupported by specific facts or an adequate explanation in the record.
3. The Superior Court properly ordered the board to issue the modified special permit and variance because remand would be futile and would merely postpone an inevitable result.

## KEY QUOTATIONS

*“When a decision contains conclusions that do nothing more than repeat regulatory phrases, and are unsupported by any facts in the record, we are constrained to conclude that the decision is “unreasonable, whimsical, capricious or arbitrary,” and therefore invalid.” (454 Mass. at 386)*

*““Reasons given” are a condition precedent to this inquiry; where no such reasons are given, as here, a reviewing court cannot be satisfied that a board’s actions are not arbitrary, a pretext, or otherwise impermissible.” (454 Mass. at 387)*

*“But an order of particular relief may be appropriate where remand is futile or would postpone an inevitable result.” (454 Mass. at 388)*

## FACTUAL BACKGROUND

Wendy's obtained a 1992 special permit and variance to construct a restaurant in Billerica, subject to a condition allowing only one entrance from Boston Road and prohibiting access from Pollard Street. A subsequent Boston Road widening project significantly altered traffic patterns, making access to and departure from the Wendy's site more difficult. Wendy's sought modification of the permit and variance to add a Pollard Street entrance, supported by governmental approvals and a traffic study indicating minimal traffic impact. The board denied the requests without specific factual findings or meaningful explanation, despite evidence that an abutting market had been allowed two Pollard Street entrances.

## PROCEDURAL HISTORY

Wendy's obtained a special permit and variance in 1992 subject to a one-entrance condition. After a roadway expansion materially changed traffic patterns, Wendy's sought modification of the permit and variance in 1997 and 1999. The board denied both requests, the matters were consolidated in the Superior Court, and after a jury-waived trial the judge annulled the denials and ordered specific relief. The Supreme Judicial Court transferred the appeal on its own motion and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- *Pendergast v. Board of Appeals of Barnstable*, 331 Mass. 555 (1954)
- *Mellendick v. Zoning Bd. of Appeals of Edgartown*, 69 Mass. App. Ct. 852 (2007)
- *Cameron v. DiVirgilio*, 55 Mass. App. Ct. 24 (2002)
- *Collura v. Arlington*, 367 Mass. 881 (1975)
- *Decoulos v. Peabody*, 360 Mass. 428 (1971)
- *Duteau v. Zoning Bd. of Appeals of Webster*, 47 Mass. App. Ct. 664 (1999)
- *Manning v. Boston Redevelopment Auth.*, 400 Mass. 444 (1987)
- *Roberts v. Southwestern Bell Mobile Sys., Inc.*, 429 Mass. 478 (1999)
- *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635 (1970)
- *Zaltman v. Board of Appeals of Stoneham*, 357 Mass. 482 (1970)
- *Subaru of New England, Inc. v. Board of Appeals of Canton*, 8 Mass. App. Ct. 483 (1979)
- *Copley v. Board of Appeals of Canton*, 1 Mass. App. Ct. 821 (1973)
- *Britton v. Zoning Bd. of Appeals of Gloucester*, 59 Mass. App. Ct. 68 (2003)
- *Board of Appeals of Dedham v. Corporation Tifereth Israel*, 7 Mass. App. Ct. 876 (1979)
- *DiGiovanni v. Board of Appeals of Rockport*, 19 Mass. App. Ct. 339 (1985)
- *Sweenie v. A.L. Prime Energy Consultants*, 451 Mass. 539 (2008)
- *Cappuccio v. Zoning Bd. of Appeals of Spencer*, 398 Mass. 304 (1986)
- *Ginther v. Commissioner of Ins.*, 427 Mass. 319 (1998)
- *Tsagronis v. Board of Appeals of Wareham*, 33 Mass. App. Ct. 55 (1992), S.C., 415 Mass. 329 (1993)

- Paulding v. Bruins, 18 Mass. App. Ct. 707 (1984)
- Iodice v. Newton, 391 Mass. 329 (1986)
- Barlow v. Planning Bd. of Wayland, 64 Mass. App. Ct. 314 (2005)
- Klein v. Planning Bd. of Wrentham, 31 Mass. App. Ct. 777 (1992)
- Shoppers' World, Inc. v. Beacon Terrace Realty, Inc., 353 Mass. 63 (1967)
- Vazza Props., Inc. v. City Council of Woburn, 1 Mass. App. Ct. 308 (1973)
- Colangelo v. Board of Appeals of Lexington, 407 Mass. 242 (1990)
- Crittenton Hastings House of the Florence Crittenton League v. Board of Appeal of Boston, 25 Mass. App. Ct. 704 (1988)
- Petrucci v. Board of Appeals of Westwood, 45 Mass. App. Ct. 818 (1998)

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