

SUPREME COURT OF DELAWARE

CCS Investors, LLC v. Brown

977 A.2d 301 (Del. 2009) · No. No. 410, 2008 · Decided August 10, 2009

SUMMARY

The Delaware Supreme Court held that the property owner is an indispensable party to an appeal from a municipal zoning board decision. Because the petitioners failed to name Preservation Delaware, Inc., the owner of the property, the Superior Court should have dismissed the certiorari petition, and the zoning board's variance decision therefore remained in effect. The court also clarified that Delaware does not impose a per se bar on use variances based on self-imposed hardships.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Holland, Justice; Steele, Chief Justice; Berger, Justice; Jacobs, Justice; Ridgely, Justice
JURISDICTION	Delaware
DECIDED	August 10, 2009
DOCKET	No. 410, 2008
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the Superior Court of Delaware's denial of a motion to dismiss a certiorari petition for failure to join indispensable parties and reversal of a municipal zoning board's grant of a use variance.
STANDARD OF REVIEW	The Supreme Court applied the same standard used by the Superior Court to review the ZBA: the ZBA's decision must be affirmed if supported by substantial evidence, and the reviewing court may not reweigh evidence or substitute its judgment for the ZBA's. The Supreme Court reviewed the Superior Court's legal determinations de novo and reviewed denial of the motion to dismiss de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	CCS Investors, LLC, Preservation Delaware, Inc. v. David H. Brown, P. James Hahn, Kathryn A. Pincus, Susan W. Soltys

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QUESTIONS PRESENTED

1. Whether a landowner whose property is the subject of a municipal zoning board decision is an indispensable party to a Superior Court appeal by writ of certiorari.
2. Whether the landowner's interests may be presumed adequately represented by a separate equitable owner or prospective developer.
3. Whether Delaware imposes a per se prohibition against granting a use variance when the asserted hardship is self-imposed or results from an existing conservation easement known to the owner.
4. Whether the Superior Court improperly reversed the ZBA's variance decision on the basis of a per se self-imposed-hardship rule.

HOLDINGS

1. The owner of land that is the subject of a municipal board of adjustment decision is an indispensable party that must be joined in an appeal from that decision.
2. When the property owner and the variance applicant or equitable owner are distinct entities, their interests cannot be presumed aligned; the potential developer cannot adequately represent the record owner's interests without a specific showing that the interests are identical.
3. Delaware does not impose a per se prohibition against granting a variance when the hardship is self-imposed or when the applicant purchased or acquired property with knowledge of an existing zoning restriction or conservation easement.
4. The Superior Court judgment could not stand because the certiorari petition failed to name and provide notice to Preservation Delaware, an indispensable party; the petition should have been dismissed and the ZBA's variance decision reinstated.

KEY QUOTATIONS

"We held in Hackett, and we now reaffirm, that the property owner is an indispensable party to an appeal from a decision of a municipal zoning board." (at 303)

"Accordingly, we reaffirm our holding that an applicant's awareness of an existing zoning restriction or conservation easement does not preclude a variance per se." (at 321)

"As such, there is no per se prohibition against a variance when a hardship is self-imposed." (at 322)

"As the owner of Gibraltar, PDI is an indispensable party to the appeal of the decision of the ZBA affecting Gibraltar." (at 325)

FACTUAL BACKGROUND

Preservation Delaware owned the historic Gibraltar Estate in Wilmington, which was zoned R-1 residential and subject to a conservation easement restricting development. Because the mansion was deteriorating and residential development was economically inadequate to fund restoration, Preservation Delaware selected CCS's proposal to adapt the property for commercial office use. The Wilmington Zoning Board of Adjustment granted CCS a use variance, but neighboring residents challenged the decision in a Superior Court certiorari proceeding.

PROCEDURAL HISTORY

Neighborhood residents petitioned the Superior Court for a writ of certiorari reviewing the Wilmington Zoning Board of Adjustment's grant of a use variance to CCS Investors, LLC. The petition initially named only the ZBA; the Superior Court denied dismissal, allowed amendment to add CCS and Preservation Delaware, Inc., and later reversed the ZBA's decision on the ground that the hardship was self-imposed. The Supreme Court of Delaware reversed the Superior Court and reinstated the ZBA's variance decision because Preservation Delaware, the landowner, was an indispensable party and Delaware has no per se bar against variances based on self-imposed hardship.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Superior Court judgment was reversed, the certiorari proceeding should have been dismissed for failure to join the indispensable landowner, and the ZBA's decision granting CCS the use variance was reinstated.

CASES CITED

- Hackett v. Bd. of Adjustment of Rehoboth Beach, 794 A.2d 596 (Del. 2002)
- Searles v. Darling, 83 A.2d 96 (Del. 1951)
- Baker v. Connell, 488 A.2d 1303 (Del. 1985)
- Liarakos v. New Castle County Bd. of Adjustment, 1998 WL 437135 (Del. Super. Ct. July 23, 1998)
- Southern New Castle County Alliance, Inc. v. New Castle County Council, 2001 WL 855434 (Del. Ch. July 20, 2001)
- Preston v. Bd. of Adjustment of New Castle County, 772 A.2d 787 (Del. 2001)
- Silvius v. Conley, 775 A.2d 1041 (Del. 2001)
- State Personnel Commission v. Howard, 420 A.2d 135 (Del. 1980)
- Weston v. State, 554 A.2d 1119 (Del. 1989)
- Sussex Medical Investors, L.P. v. Delaware Health Resources Board, 1997 WL 524065 (Del. Super. Ct. Apr. 8, 1997)
- Jenney v. Durham, 707 A.2d 752 (Del. Super. Ct. 1997), aff'd, 696 A.2d 396 (Del. 1997)
- Sawers v. Bd. of Adjustment, 1988 WL 117514 (Del. Oct. 26, 1988)
- Janaman v. New Castle County Bd. of Adjustment, 364 A.2d 1241 (Del. Super. Ct. 1976), aff'd, 379 A.2d 1118 (Del. 1977)

- Bd. of Adjustment of New Castle County v. Kwik-Check Realty, Inc., 389 A.2d 1289 (Del. 1978)
- In re Auditorium, 84 A.2d 598 (Del. Super. Ct. 1951)
- Vance v. Irwin, 619 A.2d 1163 (Del. 1993)
- Episcopo v. Minch, 203 A.2d 273 (Del. 1964)

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