

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Jepson v. Zoning Board of Appeals

450 Mass. 81 (2007) · Decided November 20, 2007

SUMMARY

The Massachusetts Supreme Judicial Court held that an abutting property owner had standing to challenge an affordable-housing comprehensive permit based on alleged flooding impacts, while declining to decide whether the municipal housing authority was aggrieved. The court also held that a local zoning board may waive dimensional zoning requirements applicable to an incidental commercial component of an affordable housing development when commercial use is permitted under the local zoning bylaw. The judgment affirming the comprehensive permit was affirmed.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Greaney, J.
JURISDICTION	Massachusetts
DECIDED	November 20, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Superior Court judgment affirming the Ipswich zoning board's grant of a comprehensive permit under G. L. c. 40B. The Supreme Judicial Court transferred the cases on its own motion.
STANDARD OF REVIEW	On summary judgment, the court reviews the material evidence in the light most favorable to the nonmoving party. The merits of a zoning board decision are reviewed to determine whether it rests on a legally untenable ground or is unreasonable, whimsical, capricious, or arbitrary.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Warren Jepson, Ipswich Housing Authority v. Zoning Board of Appeals of Ipswich, YMCA of the North Shore, Inc.

TOPICS

- zoning
- municipal law
- statutory interpretation
- appellate procedure
- wetlands

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Jepson had standing under G. L. c. 40B to challenge the comprehensive permit based on alleged flooding to his property.
2. Whether a municipal housing authority that owns abutting land may qualify as a person for standing purposes under G. L. c. 40B, § 21.
3. Whether a local board of appeals may waive local dimensional zoning requirements for an incidental commercial component of an affordable housing development when commercial use is permitted in the underlying zoning district.
4. Whether post-permit evidence concerning beaver activity and storm-water management required vacatur of the comprehensive permit.

HOLDINGS

1. Jepson had standing because he presented credible evidence of potential flooding to his property, an injury to an interest protected by the G. L. c. 40B statutory scheme.
2. A municipal housing authority that owns land abutting a proposed affordable housing development may qualify as a person for standing purposes under G. L. c. 40B, § 21, although the court did not decide whether the housing authority was a person aggrieved.
3. When commercial use is permitted on the property under the local zoning bylaw or ordinance, a board acting under G. L. c. 40B, §§ 20-23, may waive local dimensional zoning requirements applicable to an incidental commercial component of an affordable housing development.
4. The alleged post-permit factual disputes concerning beaver activity and storm-water management did not require vacatur of the comprehensive permit.

KEY QUOTATIONS

“We conclude that when commercial use is permitted on the property to be developed under the local zoning bylaw or ordinance, the board, under G. L. c. 40B, §§ 20-23, has that authority.” (450 Mass. at 93)

“That flooding can be controlled, or alleviated, has no bearing on standing as long as Jepson “put forth credible evidence to substantiate his allegations.”” (450 Mass. at 91)

FACTUAL BACKGROUND

The YMCA owned slightly more than two acres in Ipswich and sought a comprehensive permit for forty-eight low- and moderate-income rental units in two structures, one of which would include approximately 8,220 square feet of commercial space. The project required waivers of local setback requirements and wetlands-related local restrictions and was subject to forty-two conditions addressing affordability, traffic, drainage, storm-water management, and wetlands protection. Jepson, an abutter, alleged that filling and development near wetlands, together with beaver activity, created a risk of flooding to his property.

PROCEDURAL HISTORY

The YMCA applied for and received a comprehensive permit to construct affordable rental housing with an incidental commercial component. Jepson and the Ipswich Housing Authority separately challenged the permit in Superior Court. After consolidation, the parties filed cross-motions for summary judgment; the court allowed the YMCA's motion, denied the plaintiffs' motions, and entered judgment affirming the permit. The plaintiffs appealed.

DISPOSITION

affirmed

CASES CITED

- Standerwick v. Zoning Bd. of Appeals of Andover, 64 Mass. App. Ct. 337 (2005), S.C., 447 Mass. 20 (2006)
- Bell v. Zoning Bd. of Appeals of Gloucester, 429 Mass. 551, 553 (1999)
- Save the Bay, Inc. v. Department of Pub. Utils., 366 Mass. 667, 674-675 (1975)
- Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991)
- Marshlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719, 721, 723 (1996)
- Finance Comm'n of Boston v. McGrath, 343 Mass. 754, 763-764 (1962)
- Cameron v. Zoning Agent of Bellingham, 357 Mass. 757, 761 (1970)
- Planning Bd. of Hingham v. Hingham Campus, LLC, 438 Mass. 364, 368 (2003)
- Commonwealth v. Dowd, 37 Mass. App. Ct. 164, 166 (1994)
- Marotta v. Board of Appeals of Revere, 336 Mass. 199, 203-204 (1957)
- Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 354-355 (1973)
- Middleborough v. Housing Appeals Comm., 449 Mass. 514, 517 n.7 (2007)
- MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 639 (1969)
- Boothroyd v. Zoning Bd. of Appeals of Amherst, 449 Mass. 333, 334 n.3 (2007)
- Watros v. Greater Lynn Mental Health & Retardation Ass'n, 421 Mass. 106, 110-111 (1995)
- Marinelli v. Board of Appeals of Stoughton, 440 Mass. 255, 258 (2003)
- Standerwick v. Zoning Bd. of Appeals of Andover, 447 Mass. 20, 34-36 (2006)