

SUPREME JUDICIAL COURT OF MAINE

Michael Adams et al. v. Town of Brunswick et al., 2010 ME 7

987 A.2d 502 (2010) · No. Cum-09-133 · Decided February 2, 2010

SUMMARY

The Maine Supreme Judicial Court affirmed a judgment upholding the determination that leasing a house divided into two apartments to eleven Bowdoin College students constituted an allowable two-household dwelling rather than a prohibited boarding house under the Brunswick Zoning Ordinance. The Court also held that the Zoning Board of Appeals had jurisdiction to review the code enforcement officer's advisory determination. The Neighbors' separate argument concerning nonconforming use and lot-density requirements was not preserved for appellate review.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Per curiam; Saufley, C.J.; Alexander, J.; Levy, J.; Silver, J.; Mead, J.; Gorman, J.; Jabar, J.
JURISDICTION	Maine
DECIDED	February 2, 2010
DOCKET	Cum-09-133
DISPOSITION	affirmed
PROCEDURAL POSTURE	Neighbors appealed under Maine Rule of Civil Procedure 80B from the Brunswick Code Enforcement Officer's determination that leasing a house divided into two apartments to eleven Bowdoin College students was an allowable use in the Town Residential 2 zoning district. The Zoning Board of Appeals affirmed, the Superior Court affirmed the CEO's determination, and the Supreme Judicial Court affirmed.
STANDARD OF REVIEW	The court reviewed the CEO's determination directly for error of law, abuse of discretion, or findings unsupported by substantial evidence. Whether a proposed use falls within a zoning ordinance was reviewed de novo.
PRECEDENTIAL VALUE	Published state supreme court majority opinion; precedential.
PARTIES	Michael Adams, Ernest Bevilacqua, Warren Dwyer, Patricia Welsch v. Town of Brunswick, Anthony Seretakis, Dimitri Seretakis

TOPICS

zoning

municipal law

statutory interpretation

appellate jurisdiction

preservation of error

PRACTICE AREAS

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land use

QUESTIONS PRESENTED

1. Whether the Zoning Board of Appeals had jurisdiction to review the CEO's determination concerning the proposed use.
2. Whether leasing two apartments to groups of unrelated Bowdoin College students constituted an allowable two-household dwelling or a prohibited boarding house under the Brunswick Zoning Ordinance.
3. Whether the proposed division of the property into two apartments violated current lot-density requirements and was not a lawful nonconforming use, despite the argument not having been raised before the CEO.

HOLDINGS

1. The Zoning Board of Appeals had jurisdiction because the CEO issued an appealable determination regarding a proposed future use, rather than exercising unreviewable prosecutorial discretion by declining to enforce an existing violation.
2. The proposed use was an allowable two-household dwelling, not a prohibited boarding house, because each apartment provided independent facilities for a group living together as a single housekeeping entity and the tenants were collectively responsible for the entire apartment's rent.
3. The court declined to consider the Neighbors' argument that the two-apartment use violated current lot-density requirements because the argument was not presented initially to the CEO and therefore was not preserved for appellate review.

KEY QUOTATIONS

"Because the CEO did not exercise prosecutorial discretion but rather issued a "determination," see Brunswick, Me., Zoning Ordinance, ch. 7, § 703.1(A), the ZBA retained its general authority to hear the Neighbors' appeal, and this Court has jurisdiction to review the CEO's determination." (506)

"The CEO and the ZBA recognized that the Town had no legitimate interest in the relationship between the individual tenants, because the Ordinance's definition of "household" is not restricted by relationship, but rather by living arrangement" (508)

"A household is a collective enterprise; a boarding house is an individual one." (510)

"Accordingly, it is not preserved for appellate review, and we decline to consider it." (511)

FACTUAL BACKGROUND

The Owners leased two separate apartments in a house at 17 Cleaveland Street, located in Brunswick's Residential 2 zoning district, to groups of six and five Bowdoin College students. Each apartment had separate kitchen, bathroom, and sleeping facilities, and the tenants were jointly and severally responsible for the rent and most utilities for the entire apartment. The Neighbors argued that the arrangement was a prohibited boarding house and violated lot-density requirements.

PROCEDURAL HISTORY

The CEO determined that the proposed occupancy constituted an allowable two-unit residential use rather than a prohibited boarding house. The ZBA affirmed the determination and denied reconsideration. The Superior Court affirmed after directly reviewing the CEO's decision, and the Neighbors appealed. The Supreme Judicial Court held that the ZBA had jurisdiction, upheld the residential-use determination, and declined to reach the unpreserved nonconforming-use argument.

DISPOSITION

affirmed

CASES CITED

- Francis v. Dana-Cummings, 2007 ME 16, ¶ 20, 915 A.2d 412, 416
- Salisbury v. Town of Bar Harbor, 2002 ME 13, ¶¶ 8, 10-11, 788 A.2d 598, 601
- Davis v. SBA Towers II, LLC, 2009 ME 82, ¶¶ 10, 15, 979 A.2d 86, 91-92
- Mills v. Town of Eliot, 2008 ME 134, ¶ 13, 955 A.2d 258, 263
- Peregrine Developers, LLC v. Town of Orono, 2004 ME 95, ¶¶ 2-3, 9, 15, 19, 854 A.2d 216, 218-21
- Power v. Town of Shapleigh, 606 A.2d 1048, 1049 (Me. 1992)
- Spain v. City of Brewer, 474 A.2d 496, 500 (Me. 1984)
- State v. Dominique, 2008 ME 180, ¶ 25, 960 A.2d 1160, 1166
- Viles v. Town of Embden, 2006 ME 107, ¶¶ 10-12, 905 A.2d 298, 301-02