

Important Decision Regarding Pre-Existing Nonconforming Structures

March 28, 2017

In a recent decision, the Land Court clarified that Massachusetts state law does not require local zoning boards to make detailed factual findings when approving an extension or alteration to a pre-existing nonconforming structure under M.G.L. c. 40A, § 6. The decision is explained in more detail below:

Case: Wojcik v. Lovett, 24 LCR 343, 2016 WL 3430554 (Mass. Land Ct. June 22, 2016)

Background: Defendant property owners (the "Applicants") applied for a building permit in the town of East Brookfield to raze a pre-existing nonconforming summer cottage at their property and construct a new single family year-round dwelling with a footprint twice the size of the cottage. Because the proposed construction was an extension and/or alteration of the pre-existing nonconforming structure, the Applicants were required to obtain a so-called "Section 6 finding" from the East Brookfield Zoning Board of Appeals ("ZBA"). A Section 6 finding refers to the requirement under M.G.L. c. 40A, § 6 that pre-existing nonconforming structures cannot be extended or altered unless the local permitting authority makes a finding that the extension or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use. Pursuant to M.G.L. c. 40A, § 6, as codified in the East Brookfield Bylaw ("Bylaw"), after receiving the Applicants' application and holding a public hearing, the ZBA made the Section 6 finding, stating that Applicants' proposed plans "are not more detrimental to the property and the surrounding neighborhood than the current use." An abutter appealed the Section 6 finding, claiming, among other things, that the ZBA failed to make sufficient findings of fact to support its decision, and that its Section 6 finding was not supported by any evidence on the record.

Holding: The Land Court upheld the ZBA's Section 6 finding, holding that neither M.G.L. c. 40A, § 6 nor the Bylaw required the ZBA when making a section 6 finding to make the sort of detailed findings of fact that would be required to support the granting of a special permit or variance. The Court noted that under some town bylaws Section 6 findings may be treated as special permits or variances, which require detailed findings of fact under M.G.L. c. 40A, §§ 9 and 10. However, nothing in M.G.L. c. 40A, § 6 requires the permit granting authority to make detailed factual findings, and therefore, unless the local bylaw chooses to adopt such a requirement, detailed factual findings are not required to support a Section 6 finding.

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