
ZONING - MASSACHUSETTS

Timperio v. Zoning Bd. of Appeals of Weston

Appeals Court of Massachusetts. Suffolk - August 16, 2013 - N.E.2d - 84 Mass.App.Ct. 151

Property owner appealed decision of town zoning board of appeals, denying owner's application for variance and special permit for a parcel comprised of two lots.

The Appeals Court held that:

- Decision of board, that one lot had retained its separate character, did not preclude lots from merging for zoning purposes, and
- Owner's lots were not protected from merger under statute exempting certain lots from increased zoning restrictions.

Under the common-law merger doctrine, when adjacent nonconforming lots come into common ownership, they are normally merged and treated as a single lot for zoning purposes.

Owner's three adjoining lots were not protected from merger for zoning purposes under statute exempting certain lots from increased zoning restrictions, even though town zoning board had previously determined that one lot retained its separate character, where town subsequently enacted zoning ordinance increasing lot frontage requirements in district where lots were located. Town's prior finding that one lot retained its "separate status as a preexisting nonconforming lot," did not equate to a finding that the lot was separately owned from the other two lots, thereby somehow qualifying first lot for "perpetual" protection under the statute.

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