

Bond Case Briefs

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ZONING & PLANNING - MASSACHUSETTS

Leonard v. Zoning Board of Appeals of Hanover

Appeals Court of Massachusetts, Plymouth - November 13, 2019 - N.E.3d - 2019 WL 5959566

Florists brought action against zoning board of appeals seeking declaration that their outdoor displays were a lawful prior nonconforming use of their lot, and that concrete barriers separating their property from abutting restaurant property were not an alteration of a prior nonconforming lot requiring a special permit or site approval.

Town sought declaratory relief. On motions for summary judgment, the Superior Court declared florists' outdoor displays were unlawful prior nonconforming uses, thus requiring a special permit, but the concrete barriers were not an alteration that would require a special permit. Parties appealed.

The Appeals Court held that:

- Florists' outdoor displays were not prior nonconforming uses entitled to protection from enforcement of amended zoning bylaws, thus requiring a special permit;
- Items placed on metal racks outside of shop were not structures, and thus ten-year statute of limitation for enforcement of zoning regulations did not apply to prevent town from seeking zoning enforcement;
- Even if metal racks were structures, ten-year statute of limitations applicable to actions complaining of structural violations for which no special permit was given did not protect florists' use of the metal racks;
- Concrete barriers did not alter and intensify the nonconformance of florist's property, and thus were exempt from requirements of a special permit;
- Concrete barriers were not structures under zoning bylaws;
- Florists failed to exhaust their administrative remedies challenging fire chief's order to remove concrete barrier; and
- Town was precluded from seeking declaratory relief for issues involving its zoning bylaws, and thus vacatur of judgment addressing town's complaint was required.