

Bond Case Briefs

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ZONING & PLANNING - VERMONT

In re 15-17 Weston Street NOV

Supreme Court of Vermont - October 29, 2021 - A.3d - 2021 WL 5023586 - 2021 VT 85

Landlord sought review of city development review board's decision upholding a notice of zoning violation of occupancy restriction prohibiting more than four unrelated adults from occupying a rental unit in a residential low density zoning district.

The Superior Court granted summary judgment for city. Landlord appealed.

The Supreme Court held that:

- Ordinance limiting safe harbor provided by 15-year statute of limitations for zoning enforcement actions was valid exercise of city's authority, and
- Claim preclusion did not apply to bar enforcement action after prior permitting proceedings.

Ordinance limiting safe harbor provided by 15-year statute of limitations for zoning enforcement actions, with respect to unlawful uses that were resumed after discontinuance for more than 60 days, was a valid exercise of city's authority to regulate zoning, where legislature conferred broad authority on municipalities to regulate land development, legislature expressly authorized municipalities to regulate and prohibit expansion and undue perpetuation of lawful preexisting nonconformities, nothing in statutory provision relating to discontinuances of preexisting nonconforming uses compelled a uniform temporal definition of discontinuance, and ordinance was consistent with and promoted the goals of zoning.

Claim preclusion did not apply to bar city from enforcing occupancy restrictions on rental property in residential low density zoning district, specifically the prohibition on more than four unrelated adults occupying a rental unit, after two permitting proceedings involving the property, where permitting proceedings involved the number of dwelling units that could exist on property rather than occupancy of any particular unit, and there was no record evidence or clear agreement among the parties that occupancy of the specific unit that was subject of enforcement action was at issue, or substantially identical, to a claim that was at issue in prior permitting proceedings.