

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **ZONING - MASSACHUSETTS**

### **Palermo v. Zoning Bd. of Appeals of Manchester-by-the-Sea**

**Appeals Court of Massachusetts - September 27, 2013 - Slip Copy - 84 Mass.App.Ct. 1112**

Plaintiffs brought an action in Superior Court, seeking reversal of a decision of the Zoning Board of Appeals of Manchester-by-the-Sea that granted a special permit to landowner. The special permit authorized landowner to reconstruct a one family house upon a legally nonconforming lot.

Concluding that landowner had met his burden of showing that the removal of the existing house and garage and the construction of a new single family house would not be substantially more detrimental to the neighborhood, a judge affirmed the board's decision. Plaintiffs appealed.

Under its standard of review, the Appeals Court will uphold a zoning board's decision and that of the reviewing Superior Court if a rational basis for the decision exists which is supported by the record. In this case, application of the stated standard of review lead the court to affirm the judgment.

The criteria for issuing a special permit to demolish and reconstruct a single family house, where, as here, the use is allowed by right, is set forth in § 6.1.2 of the town's zoning by-law, which follows the language of G.L. c. 40A, § 6. Pursuant to § 6.1.2, the critical question is whether the proposed changes are "substantially more detrimental or injurious to the neighborhood than the existing nonconforming structure." The record fully supported the judge's conclusion that the board correctly determined that the change at issue would result in substantial improvements.