

Bond Case Briefs

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ZONING - MASSACHUSETTS

Miles-Matthiass v. Zoning Bd. of Appeals of Seekonk

Appeals Court of Massachusetts, Bristol - February 11, 2014 - N.E.3d - 84 Mass.App.Ct. 778

Neighbors appealed decision of town zoning board, determining that property owner's proposed common driveway was permissible under town zoning bylaw. The Superior Court overturned the zoning board's decision, and owner appealed.

The Appeals Court held that:

- 30-day period for neighbors to appeal to zoning board began to run when building commissioner issued decision to approve driveway;
- Town zoning bylaw was permissive, not prohibitive;
- Trial court was required to give deference to decision of board approving driveway; and
- Driveway was a permissible accessory use under bylaw.

Town zoning bylaw was permissive, not prohibitive, for purposes of determining whether proposed common driveway was permissible accessory use under bylaw. Section of bylaw stating that more restrictive interpretation controlled in instances of multiple interpretations did not apply since bylaw did not define "accessory use," bylaw did not state that uses not expressly allowed were prohibited but instead stated that buildings and uses were required to be in conformity with zoning regulations, and bylaw allowed legal nonconforming uses to be extended upon a finding that extension was not substantially more detrimental than existing nonconforming use.

Property owner's proposed common driveway to access residential lots over owner's and neighbors' lots was a permissible accessory use under town zoning bylaw. Although bylaw did not define "accessory use," driveway was a use that was dependent on or pertained to a main use, and zoning board found that common driveways were in existence in other parts of town and that proposed driveway was reasonable and adequate.