

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **ZONING - MASSACHUSETTS**

### **Deadrick v. Zoning Bd. of Appeals of Chatham**

**Appeals Court of Massachusetts, Suffolk - June 25, 2014 - N.E.3d - 85 Mass.App.Ct. 539**

Neighbors brought action seeking review of decision of town zoning board of appeals, granting property owners special permit to reconstruct a preexisting nonconforming structure on their nonconforming lot. The Land Court Department entered summary judgment in favor of owners, and neighbors appealed.

The Appeals Court held that:

- Town board was required to determine applicability of bylaw exempting certain height restrictions, and
- Introduction of a new nonconformity would require a variance, not a special permit.

Town zoning board of appeals, in determining whether special permit or variance was required for property owners seeking to reconstruct a preexisting nonconforming structure on their nonconforming lot, was required to determine applicability of town bylaw exempting certain structures from otherwise applicable height restrictions if federal regulations required the additional height unless the new structure was an “expansion.” Finding of board in decision approving special permit, that reconstruction would “expand” the prior structure, was not a finding as to applicability of bylaw, but instead was merely descriptive of the new structure in a general sense.

Under statute governing prior nonconforming uses, introduction of a new nonconformity to a pre-existing nonconforming residential structure would require a variance, not a special permit, for property owners seeking to reconstruct a preexisting nonconforming structure on their nonconforming lot, to the extent that proposed increase in height of the new structure would constitute as additional nonconformity not otherwise exempted by town zoning bylaw.