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Gund v. Planning Board of Cambridge

Appeals Court of Massachusetts, Suffolk - July 19, 2017 - N.E.3d - 91 Mass.App.Ct. 813 - 2017 WL 3080287

Plaintiffs appealed city planning board's decision granting special permit to developer authorizing alteration of court house.

The Land Court Department granted summary judgment in favor of developer and other defendants, and concluded that planning board had acted properly in treating court house as preexisting nonconforming structure. Plaintiffs appealed.

The Appeals Court held that once court house lost its governmental immunity by transfer from Commonwealth to developer, court house would constitute preexisting nonconforming structure under city's zoning ordinance such that redevelopment of court house could be approved by special permit, even if court house did not meet literal definition of preexisting nonconforming structure in ordinance, where court house was immune from ordinance when it was built and at all times since while it had been held and operated by a public entity, and nothing in ordinance or zoning statutory scheme suggested that planning board should have looked back to when court house was constructed to determine whether it complied with then-existing zoning ordinance from which it was immune at the time.