SJC Reverses Appeals Court on Standing Requirements Under the Zoning Act – With Record Speed

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All zoning conformities are alike, to rephrase Tolstoy's famous opening line, but each zoning-related injury is injurious in its own way.

Such has been the time-honored tenant of Massachusetts law for abutter standing under the Zoning Act. To successfully challenge a local zoning decision, an abutter must first identify a *particularized* injury that establishes standing.

Last Friday the Supreme Judicial Court (SJC) reaffirmed this principle. Acting with uncharacteristic speed, the SJC overturned an Appeals Court decision the day following oral arguments. While the SJC's written opinion has not been published — or likely even written — as of this date, its swift judgment has induced a collective sigh of relief in the development community.

In *Murchison v. Sherborn Board of Appeals*, 96 Mass. App. Ct. 158 (2019), the abutter-plaintiffs appealed the local building department's issuance of a foundation permit for construction of a single-family residence on the lot across the street, alleging that the construction would violate the lot width requirement under the town's zoning bylaws. After the Zoning Board of Appeals upheld the issuance of the building permit, the plaintiffs sought judicial review of the board's decision under the Zoning Act. The Land Court dismissed the plaintiffs' petition for lack of standing, finding that the plaintiffs failed to establish any particularized harm that would result from the proposed construction and concluding that the plaintiffs "simply do not want any construction on [the lot]." *Murchison v. Novak*, No. 16 MISC 000676 (KFS), 2018 WL 2769307, at *5 (Mass. Land Ct. June 5,

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2018).

The Appeals Court reversed the Land Court's decision, holding that the plaintiffs had, in fact, sufficiently identified an injury. The striking thing about the Appeals Court's decision is that it suggests local zoning bylaws define the bounds of a zoning-related injury. The following passage from the decision shows the Appeals Court's equivalence of bylaw nonconformity with injury:

It does not matter whether we, or a trial judge, or the defendants, or their counsel, would consider the district "overcrowded." *What matters is what the town has determined*. If the plaintiffs' interpretation of the bylaws is correct... then the proposed development would be closer to their house directly across the street than the bylaws' provisions permit, and, *given that particularized harm*, they are entitled to enforce those provisions.

Murchison v. Zoning Bd. of Appeals of Sherborn, 96 Mass. App. Ct. 158, 164–65 (2019) (emphases added).

While there is no doubt that zoning bylaws reflect the values of a community – correlating strongly with prevailing community notions of what *might* constitute an injury – the suggestion that a town intends to establish the rigid parameters of an injury through its zoning bylaws is belied by the frequency with which town boards issue variances and special permits allowing deviations from zoning bylaws.

The Appeals Court's decision also stands in stark contrast to previous articulations of the Zoning Act's requirement that abutters demonstrate an *individualized* injury. As the SJC previously held in *Sweenie v. A.L. Prime Energy Consultants*:

The language of a bylaw cannot be sufficient in itself to confer standing: the creation of a protected interest (by statute, ordinance, bylaw, or otherwise) cannot be conflated with the additional, individualized requirements that establish standing. To conclude that a plaintiff can derive standing to challenge the issuance of a special permit from the language of a relevant bylaw, without more, eliminates the requirement that a plaintiff plausibly demonstrate a cognizable interest in order to establish that he is aggrieved.

451 Mass. 539, 545 (2008) (internal quotations omitted). The practical result of the Appeals Court's decision would have been that abutters

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could obstruct development merely by alleging a violation of local zoning bylaws, regardless of whether such violation demonstrably harms the abutter.

While the development community will pay close attention to the SJC's forthcoming written decision, the news of the SJC's reversal represents a significant reassurance; the existence of a zoning nonconformity alone does not constitute an injury for standing purposes — further inquiry into the legitimacy of a plaintiff's alleged injury remains necessary.

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