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24-P-160

Appeals Court

SARA CLINE & others¹ vs. PLANNING BOARD OF FRAMINGHAM
& others.²

No. 24-P-160.

Middlesex. January 6, 2025. - October 16, 2025.

Present: Englander, Hodgins, & Smyth, JJ.

Zoning, Appeal, Person aggrieved, Special permit. Practice,
Civil, Zoning appeal, Standing, Summary judgment.
Municipal Corporations, Planning board.

Civil action commenced in the Superior Court Department on September 21, 2021.

The case was heard by Shannon Frison, J., on motions for summary judgment.

Benjamin B. Tymann for the plaintiffs.
Bridget Bradley, First Assistant City Solicitor, for
planning board of Framingham.
Michael A. Kelly for Leonard P. Belli & another.

¹ Lauren Dobish and Paul Rutherford.

² Leonard P. Belli, doing business as Universal Property Management; and Universal Property Management, LLC.

HODGENS, J. Following public hearings, codefendant planning board of Framingham (board) granted zoning relief to codefendant Universal Property Management, LLC (applicant), for the construction of a carwash and coffee shop. The plaintiff homeowners (plaintiffs or abutters) appealed by filing a complaint in the Superior Court. A judge allowed motions for summary judgment filed by the board and the applicant, concluding that the abutters lacked standing and that they had failed to support a claim that the board's decision was arbitrary or capricious. Although we conclude that the abutters have standing, we discern no error on review of the merits of the board's action and affirm.

Background. On July 1, 2021, the applicant petitioned the board for zoning relief on seven contiguous parcels along Worcester Road (Route 9) to raze existing structures and build a carwash and adjoining coffee shop (project). The parcels are positioned between Wheeler Avenue and Curve Street within a district zoned for business and a highway corridor overlay. Pursuant to the Framingham zoning bylaws, the applicant sought approval of its site plan as well as five special permits for carwash use, fast food service, drive-thru operation, land disturbance and stormwater management, and public way access. The board held two public hearings on July 22 and August 5 and unanimously approved the requested relief at a public meeting on

August 19. On September 3, an eleven-page decision followed, approving the plan and special permits and including forty-eight conditions.

On September 21, the abutters, who reside on Curve Street, filed their complaint in the Superior Court. They claimed that the board's decision was arbitrary, capricious, and legally untenable, and they sought review through G. L. c. 40A, § 17, as well as through an action in the nature of certiorari under G. L. c. 249, § 4. Specifically, they alleged that the project would harm their property interests by causing "severe safety concerns," substantially increased vehicle traffic, and other adverse impacts related to noise, odor, health, visual, stormwater, and environmental conditions. Expert affidavits followed (discussed more fully below) after the board and the applicant filed motions for summary judgment. The abutters produced an affidavit from a professional engineer who offered opinions on traffic safety, and the applicant produced affidavits from two professional engineers generally rejecting any suggestion that the project would cause adverse impacts of any kind. Among other things, the abutters' expert opined that some of the vehicles leaving the proposed businesses would exit onto Curve Street, where the abutters lived, and that the unusual configuration of Curve Street would lead to significant traffic safety concerns. Allowing the motions for summary

judgment filed by the board and the applicant, the judge viewed the abutters' claims as "insufficient to support standing" and further concluded that the abutters failed to produce any support for the claim that the board acted in an arbitrary or capricious manner.

Discussion. 1. Challenging decision of permit granting authority. As an initial matter, a challenge to a decision of a permit granting authority is governed by G. L. c. 40A, § 17. That statute directs parties seeking to appeal the decision to file a civil complaint with a request that a court annul the decision. Id. An action in the nature of certiorari, however, is available to correct errors in proceedings "not otherwise reviewable by motion or by appeal." G. L. c. 249, § 4. Put another way, a court's power to exercise certiorari review provides a remedy where none would otherwise exist. See Cumberland Farms, Inc. v. Planning Bd. of Bourne, 56 Mass. App. Ct. 605, 608 (2002). Because "a zoning appeal pursuant to G. L. c. 40A, § 17, provided a reasonably adequate remedy in this case," certiorari was not available. Id. Review of the board's decision is, therefore, properly limited to the standards developed under G. L. c. 40A, § 17.

2. Standing. We apply de novo review to the judge's summary judgment decision on standing. Stone v. Zoning Bd. of Appeals of Northborough, 496 Mass. 366, 373 (2025), citing 81

Spooner Rd., LLC v. Zoning Bd. of Appeals of Brookline, 461 Mass. 692, 699 (2012). "Courts are not established to enable parties to litigate matters in which they have no interest affecting their liberty, rights or property." Hogarth-Swann v. Weed, 274 Mass. 125, 132 (1931). "[T]o preserve orderly administrative processes and judicial review thereof, a party must meet the legal requirements necessary to confer standing." Save the Bay, Inc. v. Department of Pub. Utils., 366 Mass. 667, 672 (1975). "Standing is the gateway through which one must pass en route to an inquiry on the merits." Reynolds v. Zoning Bd. of Appeals of Stow, 88 Mass. App. Ct. 339, 345 (2015). "[A] plaintiff ultimately bears the burden of establishing standing." Murchison v. Zoning Bd. of Appeals of Sherborn, 485 Mass. 209, 213 (2020).

a. Presumption of standing. Only a municipal officer or board or a "person aggrieved by a decision of the board of appeals or any special permit granting authority" may challenge that decision in court. G. L. c. 40A, § 17. See 81 Spooner Rd., LLC, 461 Mass. at 700 n.12 (status as aggrieved person under G. L. c. 40A, § 17, is "jurisdictional prerequisite" for judicial review). "Abutters are entitled to a rebuttable presumption that they are 'aggrieved' persons under the Zoning Act [(G. L. c. 40A)] and, therefore, have standing to challenge

a decision of a zoning board of appeals [or other permit granting authority]." Id. at 700.

Based upon our review of the record (and our view that the 2024 amendments to G. L. c. 40A, § 17, do not apply to the circumstances presented here),³ we conclude that the plaintiffs, who own properties within the requisite proximity to the proposed project, enjoyed presumptive standing as abutters. Plaintiffs Lauren Dobish and Paul Rutherford are direct abutters, and plaintiff Sara Cline is an abutter to an abutter within 300 feet of the subject property. Given their distinctive locations in relation to the subject property, the plaintiffs are presumed to be "person[s] aggrieved" under G. L. c. 40A, § 17. See, e.g., Choate v. Zoning Bd. of Appeals of Mashpee, 67 Mass. App. Ct. 376, 381 (2006) ("direct abutter" and

³ We do not believe that the Affordable Homes Act of 2024, St. 2024, c. 150, §§ 11-13, amending G. L. c. 40A, § 17, can be applied retroactively, and we offer no further opinion on the substance of those amendments. The board issued its decision on September 3, 2021, the abutters filed their complaint on September 21, 2021, the judge issued her decision on December 13, 2023, and the amendments became effective thereafter on August 6, 2024. Given this timeline, the amendments cannot in fairness be applied retroactively to affect the abutters' standing. See City Council of Waltham v. Vinciullo, 364 Mass. 624, 628-629 (1974). Any retroactive operation of the amendments "should be limited to those cases in which, on the effective date of the statute, no decision had yet been made by the [permit granting authority]." Id. at 629.

"abutter to an abutter within 300 feet of the subject property" presumptively qualify as "persons aggrieved").

This presumption arises in these circumstances because the application to the board for the special permits triggered repeated notices to the abutters with status as "[p]arties in interest." G. L. c. 40A, § 11. Notice of a public hearing regarding the application for a special permit pursuant to G. L. c. 40A, § 9, must be provided to "the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the" property at issue. G. L. c. 40A, § 11. Such notice is a "critical feature of the statutory zoning scheme" to provide an "opportunity for interested parties to be heard." Kramer v. Zoning Bd. of Appeals of Somerville, 65 Mass. App. Ct. 186, 192 (2005). A "public hearing provides an 'opportunity for interested persons to appear and express their views pro and con.'" Id. at 190, quoting Milton Commons Assocs. v. Board of Appeals of Milton, 14 Mass. App. Ct. 111, 114-115 (1982). After the board renders its decision, notice of that decision must also be provided to the abutters. G. L. c. 40A, §§ 9, 11. These notices "must be provided by the board or its agent." Kramer, supra at 190. Such elaborate notice and public hearing procedures invited the abutters, as parties in interest, to participate in the proceedings and distinguished them from

others who "have no interest" in the subject of the litigation. Hogarth-Swann, 274 Mass. at 132. The unique interest of property owners living in close proximity to the proposed development cannot be understated because the "primary purpose of zoning with reference to land use is the preservation in the public interest of certain neighborhoods against uses which are believed to be deleterious to such neighborhoods." Circle Lounge & Grille, Inc. v. Board of Appeal of Boston, 324 Mass. 427, 431 (1949).

b. Rebutting the presumption. Our inquiry regarding standing does not end here. Notwithstanding the presumption that initially carries the abutters "over the jurisdictional threshold," if evidence shows that the abutters are not actually aggrieved at all, then they will necessarily lack the standing to obtain judicial review. Marotta v. Board of Appeals of Revere, 336 Mass. 199, 204 (1957). "[S]tanding to challenge a zoning decision is conferred only on those who can plausibly demonstrate that a proposed project will injure their own personal legal interests and that the injury is to a specific interest that the applicable zoning statute, ordinance, or bylaw at issue is intended to protect" (emphasis omitted). Standerwick v. Zoning Bd. of Appeals of Andover, 447 Mass. 20, 30 (2006). The presumption may be rebutted "by offering evidence 'warranting a finding contrary to the presumed fact.'"

81 Spooner Rd., LLC, 461 Mass. at 700, quoting Marinelli v. Board of Appeals of Stoughton, 440 Mass. 255, 258 (2003).

Here, in response to the abutters' allegation that the project would cause harm through conditions relating to safety, traffic, noise, odor, health, aesthetics, stormwater, and the environment, the applicant produced two affidavits from professional engineers (transportation engineer and civil engineer) disputing each of the abutters' asserted injuries. According to the transportation engineer, using conservatively high estimates, a traffic study predicted that the project would generate traffic consisting of 270 vehicles during peak weekday hours with only a portion of Curve Street bearing most of this new traffic. Addressing the remaining matters raised by the abutters, the civil engineer drew the following conclusions: a noise-level study predicted that noise from vacuums and other carwash equipment would not rise above the ambient noise generated by Route 9 traffic; given the 50,000 vehicles traversing Route 9 each day, air quality would be "unaffected" by vehicles queuing up for the carwash and would not have an impact on odor, health, or the environment; a proposed vegetative buffer comports with the bylaws and would "enhance" the aesthetic appearance of the subject property; and the planned stormwater drainage system complies with all local and State regulations, would divert stormwater into a closed system

away from the plaintiffs' properties, and "would not result in any adverse impacts." We are persuaded that these affidavits successfully rebutted the abutters' presumed status as aggrieved parties by providing evidence that the "allegations of harm are unfounded or de minimis" at this stage of the proceedings. 81 Spooner Rd., LLC, 461 Mass. at 702. See Standerwick, 447 Mass. at 34-35 ("abutter is presumed to have standing until the defendant comes forward with evidence to contradict that presumption"); Marinelli, 440 Mass. at 258 (presumption rebutted by evidence "warranting a finding contrary to the presumed fact" that abutter is aggrieved).

c. Review of standing based on all the evidence. "Once the presumption of standing has been rebutted successfully, the plaintiff then would have the burden of presenting credible evidence to substantiate the allegations of aggrievement, thereby creating a genuine issue of material fact whether the plaintiff has standing and rendering summary judgment [on standing] inappropriate." 81 Spooner Rd., LLC, 461 Mass. at 703 n.15. "[E]stablishing standing requires a plaintiff to do more than merely allege a zoning violation." Murchison, 485 Mass. at 214. "Aggrievement requires a showing of more than minimal or slightly appreciable harm." Kenner v. Zoning Bd. of Appeals of Chatham, 459 Mass. 115, 121 (2011). "The adverse effect on a plaintiff must be substantial enough to constitute actual

aggrievement such that there can be no question that the plaintiff should be afforded the opportunity to seek a remedy." Id. at 122. "A party challenging a board's decision need not prove by a preponderance of the evidence that his or her claim of particularized injury is true." Krafchuk v. Planning Bd. of Ipswich, 453 Mass. 517, 523 (2009).

The abutters here produced an affidavit from a professional engineer who expressed a different view on the traffic safety issue. He noted a deficiency in the site plan that called for widening only a portion of Curve Street to accommodate increased traffic and noted a failure to include sidewalks. He also noted that less than seventy-five feet from the entrance/exit driveway of the subject property, Curve Street takes a sharp turn that "presents traffic safety risks related to limited sight distances and vehicle off-tracking into opposing traffic" when utilizing the driveway.

Viewing all the summary judgment materials, including the affidavits and deposition testimony, in a light most favorable to the abutters, we cannot say that those materials establish that the abutters had "no reasonable expectation of proving a legally cognizable injury" (quotation and citation omitted). Standerwick, 447 Mass. at 35. Indeed, witness testimony disputed whether the proposed project would pose a risk to the safety of pedestrians and motorists (including the abutters) on

the abutters' street -- the applicant's engineer asserted that there would be no impact on traffic safety, but the abutters' engineer asserted that safety of motorists and pedestrians would be compromised in several fact-based respects. Also, plaintiff Rutherford's deposition testimony indicated that increased traffic posed a safety risk because Curve Street has "no real sidewalks" and contains a "blind curve" and a "narrow entryway" that requires drivers to turn "really quickly or wide." Plaintiff Cline, who has lived on Curve Street since 1984, testified about her knowledge of traffic patterns in the neighborhood and indicated that the plan would result in "about four or five people all coming together at the same point." See 81 Spooner Rd., LLC, 461 Mass. at 704 (lay witness deposition testimony may establish standing); Krafchuk, 453 Mass. at 524 (reasonable "to rely on lay witness testimony" on standing issue).

Based on the foregoing, the abutters offered sufficient evidence to "substantiate the allegations of aggrievement," 81 Spooner Rd., LLC, 461 Mass. at 703 n.15, by showing "that as a result of the board's decision, there was a reasonable likelihood of harm to [their] propert[ies] and that the harm was of the type against which the [Zoning] Act is intended to protect," Bedford v. Trustees of Boston Univ., 25 Mass. App. Ct. 372, 378 (1988). Assuring adequate traffic safety in the

neighborhood is a perfectly appropriate consideration for the board. See St. 1975, c. 808, § 2A (Zoning Act designed, in part, to "lessen congestion in the streets; . . . [and] facilitate the adequate provision of transportation"); Framingham Zoning Bylaw § VI(E)(3)(b)(i) (special permit conditions may be imposed for "purposes of safety"); Framingham Zoning Bylaw § VI(F)(1) (purpose of site plan review "is to protect the health, safety, quality of life, and general welfare of the community").

Apart from the traffic safety issue, the abutters did not offer any evidence to substantiate their claims relative to noise, odor, health, aesthetics, stormwater, and the environment. "Where plaintiffs allege several claims of aggrievement, they only need to satisfy their burden of proof with respect to one claim in order to establish standing." 81 Spooner Rd., LLC, 461 Mass. at 704 n.16. They have done so here with respect to one claim. By meeting their burden of proof with respect to traffic safety, the abutters have established standing. See, e.g., Marashlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719, 722 (1996) (concerns about "increased traffic" legitimately within scope of zoning laws); Bedford, 25 Mass. App. Ct. at 377 (abutter's nonspeculative concerns of increased pedestrian and vehicular traffic and pedestrian safety sufficient to confer standing).

3. Review of board decision on the merits. Although the abutters provided sufficient evidence to establish standing, such does not mean that they succeed on their claim on the merits. The inquiry on the merits is narrow and distinct from the question of standing and requires a court to "hear all evidence pertinent to the authority of the board . . . and determine the facts, and . . . annul such decision if found to exceed the authority of such board." G. L. c. 40A, § 17. See Marashlian, 421 Mass. at 721 (distinguishing review of "all the evidence" for purposes of standing from review of claims on the merits [citation omitted]). In her decision allowing summary judgment for the board, the judge concluded, "The Board fairly and reasonably viewed and acted on the evidence presented by [the applicant]. In its decision, the [b]oard followed the appropriate decisional criteria and set forth reasons for its decision." "We review de novo the allowance of a motion for summary judgment, viewing the facts 'in the light most favorable to the party against whom judgment entered.'" Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 376 (2019), quoting 81 Spooner Rd., LLC, 461 Mass. at 699. We agree with the judge and discern no basis to annul the decision of the board.

Zoning regulations are not intended to be "technical requirement[s] difficult of performance by the unwary." Kane v.

Board of Appeals of Medford, 273 Mass. 97, 104 (1930). Instead, they are "dictated by common sense for protection of an established neighborhood." Id. "Special permit procedures have long been used to bring flexibility to . . . [zoning classifications] . . . by providing for specific uses" that may be "desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the district." SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 109 (1984). "Uses most commonly subjected to special permit requirements are those regarded as troublesome (but often needed somewhere in the municipality, for example, gasoline service stations, parking lots, and automobile repair garages)" and uses "which would be incompatible in a particular district unless conditioned in a manner which makes them suitable to a given location." Id. The decision to grant or deny "special permits is within the discretion" of the special permit granting authority. ACW Realty Mgt., Inc., v. Planning Bd. of Westfield, 40 Mass. App. Ct. 242, 246 (1996).

Here, a "detailed record" of the board's proceedings "clearly" set forth "the reason for its decision" and evinced a careful examination of the compatibility of the project with the requirements of the zoning bylaws as well as the safety concerns raised by the abutters. G. L. c. 40A, § 15. The board expressly concluded that the project satisfied bylaw

requirements related to "traffic pattern[s]," "hazard[s] to abutters, pedestrians, vehicles, and/or the environment," and the ability of "[t]raffic and pedestrians [to] access and circulate the project safely without conflict." The board specifically required the installation of signage prohibiting vehicles from turning right onto Curve Street, thereby mitigating the impact on properties along a portion of Curve Street by requiring vehicles to exit the subject property toward Route 9. Given the board's application of the appropriate criteria and its evident responsiveness to the concerns of the abutters, the board did not base its decision "on a legally untenable ground" nor reach its decision in an "unreasonable, whimsical, capricious or arbitrary" manner. MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 639 (1970).

The abutters suggest that mere signage is insufficient traffic mitigation because drivers regularly "take illegal turns or put convenience and time-saving over compliance with traffic" rules. On appeal, we do not pass on the wisdom or potential efficacy of conditions imposed by the board, which is in the best position for an "evaluation of the seriousness of the problem." Copley v. Board of Appeals of Canton, 1 Mass. App. Ct. 821, 821 (1973). See, e.g., Fitzsimonds v. Board of Appeals of Chatham, 21 Mass. App. Ct. 53, 57 (1985) (local board "brings to the matter an intimate understanding of the immediate

circumstances, of local conditions, and of the background and purposes of the entire by-law; and so, at least in the first instance, the board's administrative view is valuable and is wanted"). Our review of the board's decision necessarily "involves a highly deferential bow to local control over community planning." Britton v. Zoning Bd. of Appeals of Gloucester, 59 Mass. App. Ct. 68, 73 (2003). Given these standards and the record before us, we discern no reason to disturb the board's decision.⁴

Judgment affirmed.

⁴ The applicant's request for appellate attorney's fees is denied.