

COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Appeals Court Takes a Different "Angle" on Lot Depth

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Joshua Lee Smith – In its recent decision in Pelullo v. Croft, the Massachusetts Appeals Court addressed the level of deference owed to the interpretation of a zoning bylaw by a local official. A developer applied to the Town of Natick's building inspector for a permit to construct a single family home. The plaintiff, an abutter, filed an opposition on grounds that the lot did not meet the bylaw's minimum 125-foot lot depth requirement. The building inspector issued the permit based on his "established practice" of measuring lot depth of "odd-shaped lots" using a diagonal line from front to back rather than using either the shortest distance or the "mean" average distance from front to back. The Natick board of appeals affirmed the issuance of the permit. An abutter appealed to the Land Court, and during the pendency of the case and subsequent appeal to the Massachusetts Appeals Court, the owner constructed a house on the lot.

The term "lot depth" was not defined in the bylaw, and the bylaw provided that undefined terms "shall have their ordinarily accepted meanings or such as the context may imply." The Court noted that this provision did not give license to give undefined terms in a bylaw a meaning that suits the personal views of those charged with its enforcement, but rather should be given "a reasonable construction" based on ordinary principles of statutory construction.

Neither the building inspector nor the board explained why a diagonal measurement of lot depth was consistent with the ordinary meaning of that term. The lot was not oddly shaped, but rather, more or less rectangular in shape. Therefore, the Court held that the use of a diagonal line to measure the depth of a rectangular lot was contrary to the ordinary and accepted meaning of the term lot depth. Because the Court determined this to be an incorrect interpretation of the bylaw, it was not entitled to judicial deference.

Citing Britton v. Zoning Bd. of Appeals of Gloucester, 59 Mass. App. Ct. 68, 73-74 (2003), the Court explained that a court owes deference to the interpretation of a zoning bylaw by local officials only when that interpretation is reasonable, and that an incorrect interpretation is not entitled to deference. The Court was not persuaded by the building inspector's "bald assertion of an established practice" to use a diagonal line to measure the depth of lots regarded as

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oddly shaped, as there was no evidence in the record to support the claim. In the absence of any objective standard for determining what constitutes an odd-shaped lot, "the use of such a criteria would lead to arbitrary and idiosyncratic results."

This decision serves as a reminder to property owners, developers, zoning officials, planners and attorneys that despite well-established local practices, and even having a building permit in-hand, an incorrect interpretation of a bylaw by local officials will not be given deference by a court.

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