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Massachusetts Zoning Disputes: Why the Path You Choose to Court Matters

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In Massachusetts zoning disputes, the route a property owner or developer takes to court may affect how much deference a judge gives a local board's interpretation of a zoning bylaw or ordinance. The recent Massachusetts Appeals Court decision in CRG Acquisition, LLC v. Planning board of Holliston, no. 25-p-915 (Mass. App. Ct. Oct. 14, 2026) illustrates why available paths to judicial review should be considered before committing to a permitting strategy. When a developer and a municipality disagree about whether a proposed project is allowed as of right or requires a special permit, the outcome may depend on more than the language of the zoning bylaw itself.

Does a Massachusetts Court Have to Defer to a Planning Board's Interpretation of Zoning?

In *CRG Acquisition,* the Appeals Court considered whether a proposed 800,000 square-foot warehouse was permitted as of right under Holliston's

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zoning bylaw, or whether it required a special permit.

The developer elected to apply for the special permit from the Planning Board, while reserving its right to argue it did not need the special permit in the first place. When the Planning Board denied the special permit application, the developer asked the Land Court to declare that the warehouse was allowed as of right, without the need for a special permit.

This question turned on an interpretation of the language of the local zoning bylaw. The developer brought its request for declaratory judgment under G.L. c. 240, § 14A, a Massachusetts statute that permits qualifying property owners to obtain a declaration concerning the applicability of zoning restrictions without first applying for a permit.

The Land Court agreed with the developer. Ultimately, the Appeals Court reversed, concluding that the warehouse required a special permit. **But the Appeals Court's discussion of judicial deference may have broader implications than the outcome of the dispute itself.**

Although Massachusetts courts ordinarily give some deference to reasonable interpretations of zoning bylaws by the local boards charged with administering them, the Appeals Court declined to defer to the Planning Board's interpretation in this case. The Court explained that the Planning Board—despite its authority to grant special permits—was not the municipal body authorized to make authoritative interpretations of the use provisions in the zoning bylaw. That responsibility belonged to the Zoning Board of Appeals (ZBA).

Can Developers Challenge Zoning Restrictions Without Going Through the ZBA?

The *CRG Acquisition* decision underscores an important but often overlooked aspect of zoning strategy: **how a developer chooses to resolve a disputed zoning interpretation may influence the degree of deference a court gives to the municipality's position.**

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In the ordinary administrative process, a developer may seek a determination (or apply for a building permit) from the local building commissioner, then appeal an adverse determination to the ZBA, and ultimately appeal the ZBA's decision to the Superior Court or Land Court under the provisions of the state Zoning Act (G.L. c. 40A, § 17). That process produces a ZBA interpretation to which a reviewing court may afford deference. And if the Court defers to the ZBA's interpretation, that could be the difference between winning and losing a close case.

But G.L. c. 240, § 14A provides an alternative. In appropriate circumstances, a property owner may seek a judicial interpretation of a zoning restriction without first obtaining a decision from the ZBA. Although the Appeals Court cautioned that a ZBA's interpretation might still warrant deference in such a proceeding, the decision illustrates why the choice of procedural route can matter.

What Should Developers Do Before Challenging a Zoning Restriction?

For developers confronting ambiguous or restrictive zoning provisions, the practical lesson is straightforward: **consider the available paths to judicial review before committing to a permitting strategy.** The decision whether to seek an administrative determination, proceed with a permit application while reserving rights, or pursue declaratory relief may have consequences beyond timing and expense. It may also affect whose interpretation of the zoning bylaw receives deference in court.

CONTACT

If you are developing property and have permitting or zoning questions, we would be happy to discuss how the outcome of this case may affect your project. Please contact Shawn M. McCormack or a member of our Real Estate Practice.

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