COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-857

THOMAS W. ARENA & others[1]

vs.

TOWN OF NANTUCKET & others.[2]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In November 2017, the planning board of Nantucket (board) granted HallKeen Management, Inc. (developer), special permits and approved a two-lot site for the construction of a sixty-four unit workforce housing project. A Land Court judge ordered the entry of summary judgment in favor of the defendants on the interpretation of the zoning bylaw of Nantucket (bylaw) pertaining to density limitations under § 139-8(D)(3)(a) and to permissible features in a "buffer area" under § 139-8(D)(3)(b). On appeal, the plaintiffs claim that the project approved by the board violates the bylaw because it surpasses the maximum number of housing units and bedrooms and contains infrastructure not permitted in the buffer area. We affirm.

[1] Carol Andersson and Elihu S. Tuttle.

[2] The planning board of Nantucket and HallKeen Management, Inc.

1. Density limitations.[3] The plaintiffs claim that the judge erred in finding that the project did not violate the density limitations under § 139-8(D)(3)(a) of the bylaw. They claim that the project must be treated as a single "[w]orkforce rental community" and that the project is in violation of the bylaw because it contains twice the number of housing units and bedrooms allowed. We disagree.

"We determine the meaning of a bylaw 'by the ordinary principles of statutory construction,'" Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley, 461 Mass. 469, 477 (2012) (Shirley Wayside), quoting Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham, 382 Mass. 283, 290 (1981), giving "substantial deference" to the board's interpretation of its zoning laws and ordinances, Wendy's Old Fashioned Hamburgers of N.Y., Inc. v. Board of Appeal of Billerica, 454 Mass. 374, 381 (2009), quoting Manning v. Boston Redev. Auth., 400 Mass. 444, 453 (1987). Accordingly, we engage in an "almost purely legal analysis" while giving 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). If the board's interpretation of its bylaws is reasonable, we will not

[3] The judge found that the plaintiffs did not have presumed standing and were not parties in interest under G. L. c. 40A, § 11; therefore they would have to prove standing at trial. Given our resolution of the legal claim, we need not resolve whether the plaintiffs have standing.

supplant it with our own judgment. See Tanner v. Board of Appeals of Boxford, 61 Mass. App. Ct. 647, 649 (2004).

The purpose of the workforce housing section of the bylaw (§ 139-8[D]) is to "incentivize the creation of workforce and affordable rental and ownership housing opportunities" and "to promote consistency, quality, and flexibility in the site layout and design." This section of the bylaw explicitly allows for "aggregation of buildings," and also contemplates that "workforce rental community lot projects" may be adjacent to each other. In addition, the minimum lot requirement for each workforce rental community is 60,000 square feet. The maximum number of dwelling units on a single lot cannot exceed thirty-two, and the maximum of bedrooms cannot exceed fifty-seven.

The board found, and the judge agreed, that "[a]llowing two qualifying developments to be built side by side" furthers the purpose of the bylaw and complies with the bylaw's structural requirements. Each lot is more than 60,000 square feet, and they are "being developed jointly as one (1) cohesive project." The judge found that the project satisfied the unit and bedroom limitations because it comprises two adjacent communities. Nevertheless, the plaintiffs claim that the project must be treated as one single workforce housing community.

The main problem with the plaintiffs' argument, i.e., that there cannot be multiple workforce housing communities next to

each other, is that it is simply inconsistent with the purpose and clear language of the bylaw. See Shirley Wayside, 461 Mass. at 477. See also Polaroid Corp. v. Commissioner of Revenue, 393 Mass. 490, 497 (1984) ("words of a statute must be construed in association with other statutory language and the general statutory plan"). The project's design reflects the flexibility that the bylaw promotes. It is no coincidence that the number of housing units and bedrooms for both lots combined is exactly twice the maximum number in the bylaw;[4] to the contrary, this suggests a deliberate decision to build two adjacent communities that each reach, but do not exceed, the maximum number. The fact that the developer and the board refer to the project in the singular is not determinative of the project's status under the bylaw. See, e.g., Kavanagh v. Trustees of Boston Univ., 440 Mass. 195, 200 (2003) (university's referring to student athlete as its "representative" did not subject university to vicarious liability). Given that the bylaw contemplates aggregation of communities and that these communities may be adjacent to one another, the judge did not err in concluding that the bylaw permits the proposed plan.[5] See Shirley Wayside, supra.

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[4] The approved project includes sixty-four units and one hundred and fourteen bedrooms (in contrast to the bylaw maximum of thirty-two and fifty-seven, respectively).

[5] The amendment to § 139-8(D)(4) of the bylaw, approved at town meeting on November 6, 2017, although relevant, is not necessary to our conclusion. That amendment confirms that a project could

2. Buffer area. The plaintiffs also claim that the project plans include impermissible infrastructure in the twenty-foot barrier required under § 139-8(D)(3)(b) of the zoning bylaw. However, because the plaintiffs filed a stipulation to avoid a trial on this issue, we deem the claim to be waived. The plaintiffs agreed to limit their claim to only "whether the Bylaw should be interpreted to permit more than just plantings, fencing, walls, or other improvements to mitigate impacts to abutting properties in the 'buffer area.'" The plaintiffs have waived any argument whether the particular elements contemplated by the plan are permissible under the bylaw.[6] The plaintiffs do not get the benefit of the stipulation (avoiding trial on the issue) without its procedural drawback. On the narrow question before us, we agree with the judge's reasoning and conclusion that the bylaw allows more in the buffer area than the explicitly enumerated improvements that the

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be divided into multiple lots if each lot meets the square-foot requirement of § 139-8(D)(1)(a)[1], as is the case here. Regardless of the amendment, given the bylaw's purpose and the contemplation of aggregation and adjacent communities, we reach the same result.

[6] The plan describes several elements of infrastructure to be set within the buffer area: a concrete path, a "grass pave" fire lane, parking areas with subterranean structures, post lights, electric-vehicle charging stations, and underground water, sewer, and electric lines.

board may require to mitigate impacts on the abutters.

Judgment affirmed.

By the Court (Meade,
Maldonado & Massing, JJ.[7]),

Joseph F. Stanton

Clerk

Entered: January 10, 2020.

[7] The panelists are listed in order of seniority.