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BLOGS

Encroachment

A Rhode Island Court Rejects Wendy's Franchisee's Challenge to the Nearby Development of a McDonald's Franchise

In *CCF, LLC v. Pimental*, 2013 R.I. Super. LEXIS 98 (R.I. Super. Ct. May 24, 2013), a Wendy's franchisee in East Greenwich, Rhode Island, sued McDonald's Corporation and a town official challenging the approval of various permits and approvals issued by the local planning board and zoning board that allowed for a McDonald's drive-through restaurant across from the Wendy's franchisee's restaurant. On the parties' cross-motions for summary judgment, the court found for McDonald's. It weighed whether the Wendy's franchisee had standing to appeal the decisions of the planning board and the zoning board. Because Rhode Island's statute does not define who is an aggrieved party to appeal a planning board's decision, the court looked to other jurisdictions.

Concluding that courts in other jurisdictions have liberally interpreted an "aggrieved party" to include nearby tenants and property owners, the Rhode Island court held that the Wendy's franchisee had standing to appeal the planning board's decision. But the court dismissed the claim because the Wendy's franchisee filed its appeal too late. On the appeal of the zoning board's decision granting the drive-through, the court found for McDonald's. The statute that applied to the zoning board's decision specifically defined an aggrieved party to be a property owner. The Wendy's franchisee did not have standing, according to the court, because it was only a lessee. The court granted summary judgment to McDonald's.

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