Recent Developments in Massachusetts Case Law



Kendra L. Berardi, Esq.

Robinson & Cole, LLP One Boston Place, Suite 2600 Boston, MA 02108 (617) 557-5943 kberardi@rc.com Kendra Berardi is a partner at Robinson & Cole, and a member of the firm's business litigation group, real estate and title insurance team, and appellate team. Prior to joining the firm, she served as a law clerk for the Hon. Karyn Scheier, former Chief Justice of the Land Court. Kendra focuses her practice on complex commercial and real estate litigation matters. She litigates and counsels clients on real estate and land use disputes, and complex business disputes, including claims for breach of contract

and business torts, such as fraud, misrepresentation, unfair and deceptive trade practices, and class action litigation.

Kendra's *pro bono* efforts include helping victims of domestic violence obtain restraining orders against abusers, which earned her the Middlesex District Attorney's 209A *Pro Bono* Initiative Award in 2013. She also represents immigrant and refugee children in deportation proceedings through the organization Kids in Need of Defense (KIND).

Kendra is a Past-President of REBA and long-time co-chair of its Continuing Education Section. She is also a member of the Association's Long-term Planning Committee and Women's Networking Group. In addition, Kendra is Vice Chair of Content on the ABA's Real Estate, Condemnation and Trust Litigation Committee, and serves on the Supreme Judicial Court's Standing Advisory Committee on Professionalism. She is a former member of the MCLE Board of Trustees, and former Chair of the BBA's Title & Conveyancing Committee of the Real Estate Section.

Kendra received her J.D., *cum laude*, from Western New England University School of Law, and served as Note Editor of the Law Review. She received her B.A. from Butler University.



Thomas O. Moriarty, Esq.

Moriarty Bielan & Malloy LLC 859 Willard Street, Suite 440 Quincy, MA 02169 (781) 817-4603 tmoriarty@mbmllc.com A founding member of Moriarty Bielan & Malloy LLC, as well as a chair of its Litigation Department, Tom Moriarty appears in both state and federal court, and focuses his practice in the area of real property, with an emphasis on community associations. He represents and advises clients in zoning and land use litigation, title disputes, prescriptive easement and adverse possession claims, beach rights disputes, construction defect and transitional litigation, common area property disputes,

insurance matters, common expense collections and condominium phasing and development matters.

Since 2005, Tom has served on the REBA Board of Directors, and was President of the Association in 2010. He is the current co-chair of REBA's Amicus Committee, a member of its Land Use & Zoning, Litigation and Residential Conveyancing Sections, and a former co-chair and current member of its Condominium Law & Practice Section and Unauthorized Practice of Law Committee. In addition, Tom is Treasurer of the Abstract Club, and is also active with the Community Associations Institute (CAI), serving as President of CAI New England in 2021, and as a member of CAI's National Amicus Team.

Tom is the recipient of the Community Associations Institute's Award of Excellence in Government and Public Affairs (1999-2000, 2007-2008, 2015), as well as the Award of Excellence, CAI-NE Education (2024). He has been named to *Law & Politics*' list of Massachusetts Super Lawyers, every year since 2005, and maintains an AV Rating with Martindale Hubbell.

In addition, Tom co-authored the book and was a faculty panelist for MCLE's seminar on Condominium Litigation, has served as a faculty panelist for MCLE's seminars on Real Estate Litigation and Resolving Complex Title Disputes, and continues to chair MCLE's Annual Real Estate Law Conference.

Tom received his J.D. from Boston College Law School, and B.A. from University of Massachusetts Amherst.

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ADVERSE POSSESSION

<u>Lewiecki v. Pepper Grove, LLC</u>, 105 Mass. App. Ct. 1109 UP: Prescriptive easement over trail affirmed; trial court's allowance of a post-trial motion to amend the complaint to add the claim was not error

McLaughlin v. Bonlie, 105 Mass. App. Ct. 1112 UP: Trial court's ruling of a prescriptive easement upheld where trial judge found that easement holder's predecessor-in-title had taken near daily walks over the easement area for over 20 years before servient estate holder claimed to have granted permission for the use

Raccuia, Trustee Nicholas Realty Trust v. Chen, 20 MISC 000321 (RBF): Party seeking prescriptive easement could not tack on predecessor's use, if any, of a concrete walkway where the lots were previously in common ownership and/or owned by members of the same family

Stonegate Browns Way 2021 LLC v. Ahern, 23 MISC 000093 (MDV): Recipients of unenforceable parol gift of interest in real property established title to "gifted" interest years later through their prescriptive activities

McClennan v. Astacaan, et al., 104 Mass. App. Ct. 1126 (2024) UP: In a claim for prescriptive easement over registered land, case remanded to trial court to allow discovery into landowner's actual knowledge of unregistered documents reflecting adverse use after discovery had been incorrectly limited to registered documents

CONDOMINIUMS

Alves v. Clarendon Condominium Trust, 2384CV01771-BLS2: The Superior Court allowed a challenge to a condominium re-sale fee, equivalent to six months of condominium charges, to proceed, leaving for further determination whether such fee violates the Massachusetts Condominium Statute because it is not assessed against all owners and only against those selling their units

Geezil v. White Cliffs Condo. Four Ass'n, 105 Mass. App. Ct. 103 (2024): Condominium associations do not have an obligation to pay for the cost of a reasonable modification to the common areas and, therefore, failure to pay for a modification does not constitute discrimination on the basis of disability

LAND USE

<u>Boylston CP, LLC v. Town of Boylston</u>, D. Mass. 2025 WL 70322: Summary judgment on substantive due process claims brought by developer entities granted in favor of Boylston and its municipal employees and agents

Coll v. Conservation Commission of Plympton, 105 Mass. App. Ct. 1105 UP: Conservation commission properly denied project under more stringent municipal conservation bylaws and regulations

<u>Flightlevel Norwood, LLC v. Boston Executive Helicopters LLC</u>, 105 Mass. App. Ct. 1114 UP: No violation of G.L. c. 93A where neighboring sublessee interfered with plaintiff sublessee's property, but were not engaged in a commercial transaction

Johnson v. Energy Facilities Siting Board, 495 Mass. 197: Substantial evidence supported Energy Facilities Siting Board's approval of electric company's petition to construct substation connecting offshore wind farm to electric grid, and Board properly imposed condition require pre- and post-construction compliance filings

Medeiros v. A Plus Waste & Recycling Services, LLC, 104 Mass. App. Ct. 1124 UP: Injunction properly granted pursuant to G.L. c. 214, § 7A to enjoin environmental damage

Minnick v. Eastward MBT, LLC, 105 Mass. App. Ct. 1108 UP: Plaintiff property owners failed to demonstrate trespass and nuisance arising from stormwater flows following development of two adjacent parcels

Murphy v. LeVites, 104 Mass. App. Ct. 1123 UP: Owners of servient estate ordered to pay appellate attorneys' fees for filing frivolous appeal and acting in bad faith by threatening to spend millions to deprive the dominant estate owners of their peaceful enjoyment of the easement and access to nearby saltwater pond

North End Chamber of Commerce v. City of Boston, D. Mass. 2024 WL 5197557: North End restaurant owners do not have a constitutionally protected property interest in on-street dining licenses and the City's ban on on-street dining did not violate their due process rights

<u>Riskalla v. Town of North Reading</u>, 104 Mass. App. Ct. 1125 UP: New owners of property were bound by enforcement order issue against previous owner by conservation commission to remove paved driveway, walkway, patio, fire pit, and sport court; applicable statute of limitations is "personal" to each new owner

MORTGAGES

Bellomo v. Select Portfolio Servicing, D. Mass. 2024 WL 4932060: Claim for declaratory relief to prevent exercise of power of sale was not ripe where foreclosure proceedings had not been initiated, scheduled or threatened

<u>D'Anello v. Select Portfolio Servicing</u>, D. Mass. 2025 WL 463400: The "regime of strict compliance" in the exercise of the statutory power of sale to foreclose does not require the mortgagee to "demonstrate punctilious performance of every single mortgage term;" it requires strict compliance with terms which concern the foreclosure sale and the actions the mortgagee must take in connection with the foreclosure sale

Emigrant Mortgage Company, Inc. v. Bourke, 127 F.4th 384 (2025): The Massachusetts statute granting the state Land Court exclusive original jurisdiction over complaints affecting title to registered land does not divest the federal district court of its diversity jurisdiction

<u>Fustolo v. Select Portfolio Servicing, Inc.</u>, 123 F.4th 528 (2024): The First Circuit affirmed the dismissal of plaintiff's claims challenging mortgage holder's right to foreclose due to improper assignment of mortgage and note

<u>Fustolo v. Select Portfolio Servicing, Inc.</u>, D. Mass. 2024 WL 5008880: Dispute determined to be moot because foreclosure was cancelled by the bank

<u>In re Dicato</u>, 664 B.R. 487 (2024): Declaration of Homestead upheld despite the property owner's failure to identify non-titled spouse

Main Street Mortgage Group, Corp. v. Son B. Tran, 32 LCR 622: Mortgagee judicially estopped from claiming title to property based on registered certificate of entry (i.e., foreclosure by entry) because mortgagee did not disclose mortgage as an asset in a prior bankruptcy proceeding

<u>Pabla v. U.S. Bank N.A., Trustee</u>, D. Mass. 2024 WL 4505216: Plaintiff property owner was estopped from challenging validity of a prior mortgage assignment where the owner subsequently executed a loan modification agreement acknowledging that the bank was the current mortgage holder

<u>Periera v. Rushmore Loan Management Services LLC</u>, D. Mass. 2025 WL 369834: Variation in name of assignee and assignor of mortgage did not create defect in chain of title

RMBS Reo Holdings, LLC v. Asia, 105 Mass. App. Ct. 1102 UP: In a post-foreclosure summary process case, the Appeals Court affirmed dismissal of an appeal where the defendant failed to pay use and occupancy charges as ordered by the court and where he failed to comply with the Massachusetts Rules of Appellate Procedure

Scott v. Bank of NY Mellon Trust Company, N.A., D. Mass. 2025 WL 50313: The court dismissed a homeowner's challenge of the foreclosure of his home for failure to state a claim. The homeowner argued, among other things, that the defendant was not the holder of the note or the mortgage and challenged the validity of the assignment from MERS to the defendant, but the court dismissed the case because it is well-settled that MERS can validly assign a mortgage on behalf of a lender

Specialized Loan Servicing, LLC v. Duncan, 32 LCR 535: In a case concerning the Predatory Home Loan Practices Act, an affidavit recorded by a mortgagor that incorrectly claims that a certain mortgage is unenforceable should not be allowed to cloud the mortgagee's title and the mortgagee has standing to seek a declaration concerning same

Strangis v. First Horizon Bank, 757 F.Supp.3d 173 (2024): Where a homeowner challenged a foreclosure sale on the grounds of inadequate notice, the proper measure of the amount in controversy was the value of the pecuniary consequence of a foreclosure sale taking place sooner than agreed upon, and not the appraised value of the property or the face value of the mortgage loan.

<u>TJR Services, LLC v. Hutchinson</u>, 105 Mass. App. Ct. 1116 UP: Defaulted borrowers sought to invalidate a foreclosure deed arguing that the buyer failed to put on evidence of a valid mortgage assignment and comply with the statute of frauds at trial. The Appeals Court disagreed because the borrowers made an admission as to the mortgage assignment in their interrogatory responses and failed to demonstrate the fact was disputed

<u>U.S. Bank Trust, N.A. v. Garcia</u>, 105 Mass. App. Ct. 1106 UP: In a post-foreclosure summary process matter where the borrower appealed from a final judgment of possession against her, the Appeals Court found that there was no accounting error where the borrower submitted a payment that only covered a portion of the past due amount and rejected the borrower's fundamental unfairness argument because the servicer was not obligated to offer a loan modification due to changed circumstances

<u>U.S. Bank Trust N.A. v. Moore</u>, 105 Mass. App. Ct. 1103 UP: No party was entitled to attorney's fees in an interpleader action as there is no statute or case holding that a judge has discretion to award attorney's fees to a defendant in an interpleader action

<u>U.S. Bank Trust, N.A. v. Perry</u>, 105 Mass. App. Ct. 1102 UP: Under federal law, a 2015 confirmatory assignment from the FDIC had occurred by operation of law when the FDIC became receiver following the 2008 failure of the original mortgagee bank and inconsistent notary jurat was not a defect in title

<u>U.S. Bank Trust, N.A., Trustee v. Murray,</u> D. Mass., 2025 WL 1071655: Default judgment recommended for assignee of a mortgage despite loss of note where assignment authorized plaintiff to enforce the note notwithstanding the plaintiff's lack of possession of the note

<u>United States v. Font</u>, D. Mass. 2025 WL 475105: A mortgage on the defendants' property, with a 2014 maturity date, was considered discharged in 2019 pursuant to the Massachusetts Obsolete Mortgage Statute

Wells Fargo Bank, N.A. v. Nearis, 32 LCR 577: G.L. c. 183, § 5B attorney's affidavit held null and void as the affidavit contained legal conclusions instead of statements of fact, statements lacking personal knowledge, superfluous and misleading statements, and statements contradicted by the record

Wells Fargo Bank, N.A. v. Trocki, 105 Mass. App. Ct. 1115 UP: Wells Fargo Bank, as assignee of a loan, could not be liable for predatory lending in connection with the origination of the loan

Young v. JPMorgan Chase Bank, N.A., 759 F.Supp.3d 283 (D. Mass. 2024): Neither Massachusetts Elder Protection Statute nor criminal claim of fraud by utterance provide a private right of action to plaintiff as bases for claims for emotional abuse and financial exploitation

STREETS & WAYS

Billings v. Deerfield, 32 LCR 628: The Land Court ruled that the Town of Deerfield never accepted the entire length of a road as a public way; only the section reflected in the 1952 recorded layout was validly accepted, despite the road's historical references and decades of municipal maintenance

Concord v. Rasmussen, 104 Mass. App. Ct. 831: A decades-long dispute over Estabrook Road in Concord clarifies that a statutory "discontinuance" of a public way ends municipal maintenance duties but does not necessarily eliminate the public's right of access

SUBDIVISIONS

Clinton v. Hopedale Planning Board, 32 LCR 551: The Land Court dismissed an abutter challenge to a Planning Board's subdivision approval, holding the plaintiffs lacked standing to contest waivers and that related declaratory judgment claims were duplicative of a prior Superior Court action

<u>Town of Kingston v. High Pines Corp.</u>, 105 Mass. App. Ct. 1109 UP: Appeals Court upheld enforcement of a subdivision settlement agreement between the Town of Kingston and a developer, affirming that it was a binding contract and supporting the trial court's tailored remedy of specific performance limited to preliminary coordination steps

West End Residences, LLC v. Walpole Planning Board, 32 LCR 517: Court ruled that the Planning Board exceeded its authority in refusing to endorse an ANR plan due to a typographical error, where the plan clearly did not show a subdivision under G.L. c. 41, § 81P

TITLE

<u>Buffonge v. Abu</u>, 32 LCR 609: The plaintiff was allowed to amend his complaint to include a claim of adverse possession after his claims for deed reformation and unjust enrichment were found to be barred by the statute of limitations. The court rejected the defendant's argument that the adverse possession claim would be futile, because the court found that the property was not registered land

Connecticut Attorneys Title Insurance Co. v. Loan Funder LLC, Series 53008, D. Mass. 2025 WL 509456: CATIC sued Loan Funder after a fraudulent real estate transaction led to a loss on a title insurance policy CATIC had issued. The court denied CATIC's motion for judgment on the pleadings and permitted Loan Funder to proceed with their claims for declaratory judgment and violation of G.L. c. 93A

<u>Erikson v. Erikson</u>, Mass. App. Ct. UP: After a bench trial held via Zoom, the judge found in favor of the plaintiff on her claim for undue influence and voided a deed from the parties' mother to the defendant's minor children

<u>Houde v. Sears</u>, 32 LCR 571: After an analysis of multiple conflicting judgments issued years apart, the court concluded that the "first-in-time" rule applied, and that as a result the plaintiff held an undivided 25% interest in the subject property and was permitted to bring a partition action

Wells Fargo Bank, N.A. v. Town of Wilmington, 33 LCR 31: The transfer of an affordable housing unit was voided, and the town and state agencies allowed to exercise their rights of first refusal, where the owner of the property failed to notify said agencies of a transfer as required by the deed rider

Woodland, LLC v. The Horace A. Kimball & S. Ella Kimball Foundation, 32 LCR 612: The ruling in *Conway v. Caragliano* did not change the trial court's original decision in this case that the plaintiff did not own an undivided interest in the undeveloped roadways that would allow it to bring a partition action related to such roads

ZONING

<u>Cronan v. Webster Zoning Board of Appeals</u>, 32 LCR 569: A ZBA cannot ignore zoning enforcement issues remanded for decision, even where the parties dispute interpretation of the bylaw—particularly where the garage exceeds a 25% expansion cap without a required special permit

Bonanno v. Gloucester Zoning Board of Appeals, 32 LCR 558: De minimis and speculative harm insufficient to confer standing in connection with a zoning appeal under 40A Section 17 despite finding that harm was both a protected interest and special and unique to plaintiff

Bruno v. Tisbury Zoning Board of Appeals, 32 LCR 640: Board's recission of teardown order was appropriate where owner of non-compliant structure had innocently created the violation, there were no alternate paths to zoning compliance, tearing down the structure would impose a significant hardship, and the non-compliance was mitigated by conditions imposed by the Board

Griffith v. Bellingham Zoning Bd. of Appeals, 105 Mass. App. Ct. 1114 UP: Plaintiffs lacked standing to challenge a 40B Comprehensive Permit via declaratory judgment pursuant to G.L. c. 231A Section 1 and failed to state a claim under G.L. c. 240, § 14A on a declaratory judgment claim characterized by court as a backdoor challenge the of the ZBA decision

<u>Kavanagh v. Newton Zoning Bd. of Appeals</u>, 25 PS 000013 (KTS): Court ordered the Plaintiffs to post bond in the amount of \$25,000 pursuant to G.L. c. 40A Sec. 17 finding Plaintiffs' appeal based upon a balance of the relative financial means of the Plaintiffs and the Defendant developer

<u>Silverio v. Planning Board of North Andover</u>, 32 LCR 585: Court finds plaintiff to be person aggrieved with standing to appeal under 40A Section 17 based on expert testimony that lighting plan would cause plaintiff particularized harm despite ultimately rejecting that expert testimony on the merits

Symes Development & Permitting, LLC v. Concord Zoning Board of Appeals, 33 LCR 90: Zoning Board's decision denying developer's application for a special permit for earth removal held legally untenable and not supported by credible facts

<u>Thompson v. Essex Zoning Board of Appeals</u>, 33 LCR 56: ZBA's decision upholding Building Inspector's determination not to enforce purported violation of By-Laws affirmed by Land Court finding concrete foundation does not constitute a structure within the meaning of the zoning bylaws

EASEMENTS

<u>Dolan v. Loiselle</u>, 33 LCR 73: Relocation of a beach easement was appropriate where the proposed relocated easement served the purpose for which the easement had been intended and the dominant estate holder's objection to the relocation was sentimental in nature.

<u>Gladstone v. Denizard</u>, 33 LCR 60: Secondary easements in favor of the servient estates were implied where necessary to allow for access to an express easement to use the beach and where the express beach easement had not been extinguished by merger or partial merger.

Hendley v. Darisse, 33 LCR 99: Express easement did not grant general access rights over the servient estate where the express language of the easement said that the right of access was for "installation, repair, and maintenance" of the dominant estate's septic system and reciprocal implied easements had been reserved where each lot's utilities ran over or through the abutting property.

Zaimes v. Handy, 32 LCR 518: Servient estate holders had no legal right to maintain gazebo in an easement area where easement had been expressly granted, dominant estate holders had not abandoned easement rights, and servient estate holder had affirmatively agreed to remove gazebo upon purchasing the property.

LEASES

133 West Main Street Realty, LLC v. Kimball, 105 Mass. App. Ct. 295: Damages under G. L. c. 93A were properly awarded where landlord owned multiple rental properties, managed the premises, paid bills associated with the rental, and resolved issues related to the rental and, accordingly, was engaged in trade and commerce.

<u>TJR Services LLC v. Hutchinson</u>, 495 Mass. 142: Summary process action was properly filed and the Housing Court's order for use and occupancy payments was proper where the Land Court had entered a judgment declaring the landlord to be the owner of the property, because such a judgment was considered final notwithstanding the tenant's appeal of that judgment.

PURCHASE CONTRACTS

<u>266 River Street Redevelopment, LLC v. Martin, Mass. App. Ct. UP: A memorandum of lis pendens was properly endorsed and a special motion to dismiss was properly denied where plaintiff failed to exercise option to purchase in writing by the deadline, but there was reasonable factual support for the plaintiff's claim that the defendants had waived the deadline by their conduct.</u>

<u>Bucci v. Campbell</u>, Mass. App. Ct. UP: Liability and damages under G. L. c. 93A were properly entered against seller who failed to install a natural gas line for the buyer's lot, the seller advertised a natural gas line for the lot, and the seller knew that a natural gas line was an important consideration in the buyer's agreement to purchase the lot.

<u>Crown Communities, LLC v. Austin</u>, 105 Mass. App. Ct. 113: Case remanded for further findings where trial judge's determination that the association of resident owners of a manufactured housing community had not properly exercised a right of first refusal contained errors of both math and law.

<u>Dairy Farmers of America, Inc. v. Bernon Land Trust</u>, 2025 WL 314148: Defendant land trust was ordered to convey property to the plaintiff after determination that plaintiff had acquired a right to purchase through another entity's bankruptcy and that option to purchase had not been invalidated as a result of corporate mergers or assignments.

Evans, et al. v. Valentino, 32 LCR 652: Action for specific performance failed where the deadline for closing set out in the parties' purchase and sale agreement expired and, consequently, the parties were no longer bound by their obligations, including the sellers' obligation to obtain a Title V certificate.

<u>Mazareas v. Mazareas</u>, Mass. App. Ct. UP: Option to purchase was not exercised where holder of option conditioned exercise on conditions not accepted by seller and deadline expired prior to option holder exercising the option without conditions.

<u>McCarthy v. Young</u>, 105 Mass. App. Ct. 203: An offer to purchase, despite being signed by all parties and including language specifying that it created a binding obligation, was unenforceable because it failed to set out the material terms of the easement.

<u>Trites</u>, et al. v. <u>Cricones</u>, et al., 105 Mass. App. Ct. 246: A judgment and award of damages pursuant to G. L. c. 93A against the seller of a new home was affirmed for the seller's failure to remove or eliminate Japanese knotweed contamination on the property.

<u>Wentworth v. Whitco Properties LLC</u>, Mass. App. Ct. UP: Where purchase and sale agreement required seller to obtain and record a mortgage discharge prior to closing, seller did not do so by the closing date, and the parties did not agree to extend the deadline for performance, the trial judge properly dismissed the buyer's action for specific performance.

TAXES AND TAX TAKINGS

480 McClellan LLC v. Board of Assessors of Boston, 495 Mass. 333: Property owned by Massport was not entitled to a tax exemption where Massport leased the property to a private entity and the lessee was using the property for a business purpose, rather than a public purpose.

<u>City of Marlborough v. Driscoll</u>, Mass. App. Ct. UP: Judgment foreclosing right to redeem property overturned where the Supreme Court's ruling in <u>Tyler v. Hennepin County</u> was issued during the landowner's appeal and required the municipality to return excess funds to owner.

Komosa v. Board of Assessors of Montague, 105 Mass. App. Ct. 75: Land could not be assessed as an agricultural use under G. L. c. 61A where the landowner did not devote the required five acres to agricultural use.

<u>Mango v. Board of Assessors of Marblehead</u>, Mass. App. Ct. UP: Homeowner did not meet his burden to prove that his waterfront condominium unit was worth nothing, despite a non-compliant fire escape and water leaks.

ZONING – EXEMPTIONS, SPECIAL PERMITS AND VARIANCES

Exemptions:

<u>Darish v. Needham Zoning Board of Appeals</u>, 32 LCR 616: Childcare facility was not required to obtain a special permit for construction as it is a protected use under the Dover Amendment.

MJ Operations LLC v. DeGrazia, 33 LCR 112: An educational, life skills, and career training facility was a protected use under the Dover Amendment and the Board's decision denying a building permit was annulled.

Special permits and Variances:

<u>Bartolomeu v. Oak Bluffs Planning Board</u>, 33 LCR 47: Planning Board's decision to grant a waiver of required off-street parking was not arbitrary, capricious, or legally untenable where the Board had authority to waive the requirements of the bylaw based on the plain language, the Board's interpretation of its bylaw was entitled to deference, and the bylaw did not require the Board to make special findings.

Boula RE Holdings, LLC v. City of Boston Zoning Board of Appeal, 32 LCR 525: Abutter's claim that permitted use would overburden its easement rights was insufficient to confer standing where the easement was broad and general and contained no limiting language.

<u>Chatham Productions, LLC v. Nixon</u>, 32 LCR 512: Board's denial of two special permits to construct residential homes was not legally tenable where Board's decision was merely a recitation of the special permit criteria without further explanation or findings.

<u>Cogliano v. Planning Board of Norton</u>, Mass. App. Ct. UP: Abutter's comprehensive challenge to solar installation was without merit where evidence showed that the energy storage systems were integral to the solar installation and allowed pursuant to the relevant bylaw provision and conditions imposed by the planning board were not supported by evidence at trial.

<u>Deckelbaum v. ZBA of Provincetown</u>, 105 Mass. App. Ct. 22: Abutter's appeal of setback variance denied where replacement deck was farther from abutter than previous deck had been and abutter had improperly removed the original deck, promised to replace it, and failed to do so.

Evans v. Oxford Planning Board, 33 LCR 16: Where evidence at trial proved that any harm from increased traffic would be *de minimus* that harm was insufficient to confer standing on the abutter, notwithstanding the fact that the abutter's concerns were contemplated by zoning and were special and different from the community.

<u>Maddalone v. Town of Nantucket Zoning Board of Appeals</u>, 32 LCR 531: Decision to grant special permit for renovations to a pre-existing non-conforming property was not arbitrary, capricious, or legally untenable where Board properly concluded that window wells were not structures and renovations were not more detrimental to the neighborhood.

MJ's Market, Inc. v. Jushi Holdings, Inc., et al., --- F. Supp. 3d ---: Where applications for a special permit and variance were opposed by the town's only other licensed marijuana retailer and retailer engaged in other anticompetitive behavior, applicant's antitrust action survived the defendants' motion to dismiss.

Ross v. Planning Board of the Town of Shrewsbury, 33 LCR 38: Abutters did not have standing to challenge special permits where they produced no evidence of traffic harms beyond conjecture and the evidence at trial established that any expected headlight glare from the project would be *de minimus*.

Whitter v. Planning Board of Ipswich, Mass. App. Ct. UP: Dismissal of special permit appeal was upheld where abutters' presumption of standing was rebutted and abutters failed to substantiate claims of aggrievement with evidence other than conjecture and personal opinion.

Windrock Trust Company LLC v. Planning Board of Lincoln, Mass. App. Ct. UP: Subdivision lot owner's challenge to a trail easement imposed as a condition of the original developer's special permit was time-barred where complaint was filed forty-two years after the special permit had been issued.