



Friday Fast Facts

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Farrell Fritz Long Island Land Use and Zoning Blog

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Single and Separate Exemptions For Substandard Lots

By John C. Armentano on September 12, 2022

POSTED IN ZONING CODE, ZONING IMMUNITY, ZONING LOT

Zoning codes are constantly evolving in response to perceived or real threats of overdevelopment. Generally, a municipality may in the reasonable exercise of its police power, amend its zoning code to be more restrictive in the bulk area requirements required for development of a parcel. Known as a "merger provision" when a landowner purchases an adjacent substandard parcel of land, the lots merge with the existing property by operation of the local zoning ordinance.

The "single and separate" doctrine, however, may provide exemptions from subsequent more restrictive zoning ordinances. Sometimes referred to as "checker boarding," a landowner who owns property "single and separate" from another adjacent parcel may be able to preserve a developable lot despite a zoning code amendment prohibiting such development. But this is only if the municipality wants to extend such an exemption.

As stated by the Court of Appeals in *Matter of Khan v Zoning Board of Appeals of Vil. of Irvington*, 87 NY2d 344[1996], “there is no need for a common-law rule to protect landowners who possess parcels in ‘single and separate’ ownership situations,” and the Court of Appeals has declined to adopt such a rule. The Court concluded that since the landowner’s property rights are protected by the availability of area variances, there is no need to overrule the municipality’s legislative zoning authority by creating a common-law right that automatically vests property owners with an exemption from area variances.

As a result, a municipality may provide this relief to exempt the owners of substandard parcels by creating a zoning exemption for properties that are held in single and separate ownership. These exemptions are part of most zoning codes and serve an important purpose. As stated by the Court of Appeals in *DeTroia v Schweitzer*, 87 NY 2d 338 [1996], the purpose of a single and separate ownership exemption clause to a zoning code is to protect long-term property owners from amendments that render their previously conforming property useless, and thus preventing the more restrictive zoning ordinance from having a possible unconstitutional confiscatory effect.

Case law also clearly holds that commonly owned parcels will merge and not be considered “single and separate” for zoning purposes if: (1) they were used in conjunction with each other and (2) materially enhance the value and utility of each other. *Matter of Barretto v Zoning Board of Appeals of Inc. Vil. Bayville*, 1234 AD2d 692 [2 Dept 1986].

This is why savvy property owners keep properties in separate ownership.

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