

J. GEORGE DRISCOLL et al.

v.

CITY OF SACO

Submitted on Briefs June 1, 2011

Decided September 22, 2011

Panel: SAUFLEY, C.J., and LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

J. George and Nancy S. Driscoll appeal from a judgment of the Superior Court (York County, *Brennan, J.*) affirming a decision of the Saco Zoning Board of Appeals, which affirmed the decision of the Saco Code Enforcement Officer. The CEO denied the Driscolls' application for a permit to build on their nonconforming vacant lot after concluding that, pursuant to section 502-1 of the Saco Zoning Ordinance, the vacant lot had merged with their house lot by virtue of the lots being contiguous and held in common ownership at the time section 502-1 became effective. Contrary to the Driscolls' contentions, their vacant lot lost its grandfathered status as a buildable lot by operation of section 502-1, when it was in common ownership with their house lot in 1985. *See Farley v. Town of Lyman*, 557 A.2d 197, 201 (Me. 1989); *John B. DiSanto & Sons, Inc. v. City of Portland*, 2004 ME 60, ¶ 4, 848 A.2d 618, 619. In addition, that loss of grandfathered status was "permanent and irreversible," and a subsequent conveyance of the vacant lot from George to Nancy could not restore it. *See Farley*, 557 A.2d at 201; *DiSanto & Sons*, 2004 ME 60, ¶ 4, 848 A.2d at 619. Nothing in the record before us demonstrates that either the CEO or the Board erred as a matter of law in applying the zoning ordinance in this matter. *O'Toole v. City of Portland*, 2004 ME 130, ¶ 8, 865 A.2d 555, 558.

Furthermore, the Board's denial of the request for a variance is final, *see Fitanides v. Perry*, 537 A.2d 1139, 1140 (Me. 1988); *Maines v. Sec'y of State*, 493 A.2d 326, 330 (Me. 1985), and absent a change in factual circumstances, *see Penkul v. Matarazzo*, 2009 ME 113, ¶ 10, 983 A.2d 375, 378, the Driscolls are precluded from applying for a variance for the vacant lot.

The entry is:

Judgment affirmed.

On the briefs:

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