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Municipal Corporations—Lodging Houses—Accessory to Hospital Use

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Lodging Houses—Accessory To Hospital Use

In *DeMott v. Notey*[15] the Court held that a village zoning ordinance[16] prohibiting maintenance of lodging houses did not restrict a hospital from furnishing two dwellings for use by hospital personnel, when such dwellings were adjacent to and formed a single unit with the hospital.

The property, which included a main building and two dwellings, was leased by defendants as a unit. The main building was used as a hospital and the two dwellings were each used to house from four to five hospital personnel. Use of the main building as a hospital was a permitted use. The zoning ordinance involved prohibited use of the remaining dwellings as "boarding houses" unless such use was an "accessory use." The Court took judicial notice of the fact that it was customary for a hospital to furnish housing facilities for its personnel, and, since the dwellings in question were part of the unit forming the hospital property, the use was as "accessory use" within the meaning of the ordinance.

A hospital is inhabited by sick people who may need immediate attention. Therefore, the Court here is justified in assuming that the legislators of the ordinance involved did not intend to lessen a hospital's ability to provide such attention by prohibiting their personnel from living in furnished dwellings adjacent to such hospital.

Zoning Laws—Aesthetic Considerations

Zoning laws have been upheld by the courts as a justifiable exercise of the police power.[17] The rule generally supported in the past was that only public health, safety and morals were to be submitted to reasonable definitions and delimitations by zoning ordinances; the zoning power was not to be exercised for purely aesthetic consideration,[18] although such considerations would have some weight.[19]

Petitioner, in *Presnell v. Leslie*,[20] was an amateur radio operator, residing in a "Residence A" zone of Long Island, who had sought a permit to replace his small antenna with a 44 foot steel tower. The zoning law of his village, as applied to the petitioner, would not permit him to raise such a tower.

15. 3 N.Y.2d 116, 164 N.Y.S.2d 398 (1957).
16. ORDINANCE OF THE VILLAGE OF FREEPORT, LONG ISLAND No. 10.1.
17. Baddour v. Long Beach, 279 N.Y. 167, 18 N.E.2d 18 (1938), *appeal denied* 308 U.S. 503 (1939).
18. Dowsey v. Village of Kensington, 257 N.Y. 221, 177 N.E. 427 (1931).
19. See notes 17 and 18 *supra*.
20. Presnell v. Leslie, 3 N.Y.2d 384, 165 N.Y.S.2d 488 (1957).