

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2020

Volume XXIV, Issue 2

NONCOMPLIANCE WITH REGULATIONS DOES NOT ALWAYS JUSTIFY DENIAL OF AFFORDABLE HOUSING

An affordable housing application to build 105 single family homes on a 17-acre parcel of land was denied by the commission due to various concerns over stormwater drainage. The commission's experts determined that the application, as submitted, failed to meet several standards in the zoning regulations regarding drainage. A revised application which sought to address these shortcomings was also denied. The matter ended up before the Superior Appellate Court which ruled in favor of the developer and reversed the decision of the commission.

A commission should remember that in denying an affordable housing application, it is not enough to find that the application does not comply with the zoning regulations. The commission should also show that compliance with the zoning regulations is necessary to protect the public interest and that the public interest involved clearly outweighs the need for affordable housing in the town.

In this case, while there may have been some minor compliance issues in regard to the regulations for stormwater drainage, the evidence in the record showed that the applicant's engineer and the commission's engineer worked together to address the

commission's concerns. The court found there was no evidence in the record that this plan would not protect the public interest. *Autumn View LLC v. Planning & Zoning Commission*, 193 Conn. App. 18 (2019).

WETLANDS APPLICATION CANNOT BE DENIED SOLELY ON IMPACTS TO UPLAND REVIEW AREA

An owner of a 3-acre parcel of property sought to construct 7 single family homes on it. A previous plan to construct an 11-unit condominium on this same parcel had been approved but not built. While there were no wetlands or watercourses on the property, a drainage ditch on an abutting property placed a portion of the subject lot within the upland review area. A petition was filed with the commission requesting that a public hearing be held.

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CONFERENCE CANCELLED

The Federation has cancelled its Annual Conference for April 30, 2020 at the Aqua Turf Country Club in Plantsville CT. An insert is included with this newsletter explaining the cancellation and the refunding of any checks. Information on the cancellation can also be found on the Federation's website www.cfpza.org.

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com

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At the hearing, testimony from the town's conservation officer was received. She testified that the new proposal would involve a greater disturbance within the upland review area and that the prior approval was a feasible and prudent alternative to the proposed 7 home plan.

The commission denied the application based largely upon the conservation officer's testimony. On appeal, the court found that this evidence was not sufficient to sustain the denial. In making its ruling, the court stated that in deciding an application, a municipal wetlands agency's fundamental purpose is to decide whether the proposed activity will have an adverse impact on a wetlands or watercourse. In this case, the evidence only addressed the impact the proposed development would have on the upland review area. Without relevant evidence as to any effects on the neighboring drainage ditch, the Commission could not deny the application. See *Blue Bird Prestige Inc. v. Inland Wetlands & Watercourses Commission*, 68 Conn. L. Rptr. 727 (2019).

INTERPRETATION OF ZONING REGULATIONS

When interpreting a term that is not defined in the zoning regulation, a commission can rely on a common understanding of the term. This can be derived from its own, past interpretations

as well as definitions found in a dictionary as well as those found in the zoning regulations of other municipalities.

In this case, the commission was faced with the task of determining whether a landscaping contractor's business qualified as a horticultural use. While the commission thought it did, a reviewing court disagreed. The court looked not just at the dictionary definition for a horticultural use but also looked to other town's zoning regulations to find a type of use that fit the activities associated with the landscaping business. In this case, the use better approximated what is known as a contractor's yard, which was not a permitted use. *Kruk v. PZC*, 69 Conn. L. Rptr. 157 (2019).

CONDITION OF APPROVAL CAN INCLUDE FIRE PREVENTION MEASURES

Attaching as a condition of approval that a homeowner install a fire protection system was found to be a valid exercise of a zoning board of appeals' authority to grant a variance. The variance in question was to reduce certain sideyard requirements so that the applicant could construct a new dwelling on her undersized lot. A letter from the town fire marshal alerted the board to the fact that reducing separation distances between buildings can cause an increased risk to fire spreading from

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Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

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one building to another. In order to mitigate this increased risk of fire, the fire marshal recommended that the board require a sprinkler system be installed in the new dwelling. This the board did, approving the variance to reduce the sideyard setbacks with the condition that a fire suppression sprinkler system be installed in the dwelling.

An appeal to court followed based on the argument that the board had no authority to impose a requirement not found in the zoning regulations. The court upheld the condition as it served a legitimate zoning purpose – to prevent fire hazards. It is well recognized that one purpose of sideyard requirements is to prevent the spread of fires. To offset the negative effect a reduction in sideyard requirements would have on this zoning purpose, the board was within its authority to condition its approval on the installation of fire prevention system. *See Cariati v. Board of Zoning Appeals, 68 Conn. L. Rptr. 181 (2019).*

WHAT IS A GROUP HOME

After initially receiving a zoning permit to renovate and then use a single-family home as a group home for 5 elderly adults, the owner had to defend the permit before the zoning board of appeals. A neighboring property owner had appealed the issuance of the zoning permit, claiming it allowed the property to be used as a boarding house or a

nursing home, neither of which were permitted. The zoning board agreed, and voted to revoke the permit. An appeal to court followed.

The court reversed the decision of the Board, finding that the use of the property was more like a group home for disabled persons which has been found to qualify as a single-family home so long as there are fewer than 5 residents. The court specifically looked to the level of care that would be provided to the elderly residents, which included assistance with taking medications. This level of care did not meet the standard normally provided by a nursing home but exceeded that of a boarding house. *See 7 Forest Hill Road LLC v. ZBA, 69 Conn. L. Rptr. 41 (2019).*

ANNOUNCEMENTS

Workshops

At the price of \$180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest and how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut where he maintains a strong focus in the area of land use law

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

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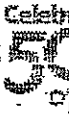
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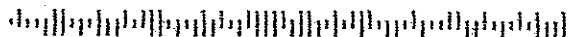
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North Haven Planning & Zoning Commission
Town Hall
18 Church Street
North Haven, CT 06473



CONNECTICUT FEDERATION OF PLANNING & ZONING AGENCIES

790 Farmington Avenue, Building 2B

Farmington, CT 06032

(860) 677-7355

cfpza@live.com

ANNUAL CONFERENCE TO BE CANCELLED

After much consideration and discussion, the decision has been made to cancel the 72nd Annual Conference of the Connecticut Federation of Planning and Zoning Agencies which had been rescheduled to April 30, 2020. All possibilities for holding the conference while minimizing risks to staff, volunteers, and our membership were considered. With great reluctance it was decided that the reality of the situation made it necessary to cancel the event. This decision was corroborated by the Aqua Turf staff who let us know that they must close for large gatherings until further notice, following CDC and CT Public Health protocols to promote social distancing. This is very disappointing but public health is of the utmost importance at this critical point.

We are sincerely grateful to the entire membership of The Connecticut Federation of Planning and Zoning Agencies for your continued support during these difficult times. All Conference registration payments have been returned. If you have made a payment that was not returned, please call (860) 677-7355 or email cfpza@live.com.

Because of the overwhelming interest in this year's topic "Alternative Solutions to Providing Affordable Housing" and because our speaker, Hiram Peck, has already done a great deal of preparation to present this topic, we are considering hosting an on-line meeting where the presentation, as well as the presentation of awards, can still take place. Details on this proposed on-line conference have not yet been finalized. It will likely be an early evening event to take place on April 30, 2020. There will be no charge for this event and continuing education credit can be offered to those who attend at their request.

Please look for an announcement about this event on our website: www.cfpza.org with details about the event along with registration and access instructions. The announcement will be made no later than April 15, 2020.

Again, THANK YOU!