

East Lyme Planning Commission

Regular Meeting

Tuesday, May 20, 2014

FILED IN EAST LYME
CONNECTICUT
May 27, 2014 AT 9:10 (AM/PM)
Kathryn Palazzo
EAST LYME TOWN CLERK

PRESENT: Brian Schuch, Rita Palazzo, Frank Balantic, Joan Bengtson, Ernie Covino, Francine Schwartz
Michael Hess, Alternate *Sat as Regular Member

ALSO PRESENT: Gary Goeschel, Planning Director, Anne Thurlow, Alternate

ABSENT: Ex-Officio, Rose Ann Hardy, John Birmingham, Alternate

Chairman Schuch called this Regular Meeting of the Planning Commission to order at 7:01 PM.

The Commission seated Alternate Michael Hess as a Regular Member for the evening.

Pledge of Allegiance

The Pledge was observed.

Additions to the Agenda

There were no additions to the Agenda.

II. Public Delegations

Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved subdivisions under construction (Item VI) and in-house proposals or general topics of discussion (Item VII) are open to comment. Items, referrals, or applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations.

There were none.

- ****Motion (1)**

Ms. Bengtson motioned to move the New Business Solarize East Lyme item up in the Agenda due to the limited availability of Mr. Chjbot.

Mr. Covino seconded the motion.

Vote: 6-0-0. Motion passed.

Mr. Jay Chjbot came forward to familiarize the Commission with the Solarize East Lyme Program. He stated that he is from Encon Solar and that the Town chose Encon to sell solar packages to its residents after a lengthy vetting process. Flyers have been mailed to many of the residents explaining a kickoff celebration and informational Meeting at the East Lyme Town Hall, on May 22nd, 2014. The program started out west, and this is actually the fourth round to occur in Connecticut. Westport, Manchester and Coventry are the Towns that Encon has solarized previous to East Lyme. Encon is a local company located in Stratford, Connecticut and is seeking as many people as possible to inquire about solarizing their homes.

The program is a tiered project and the price is fixed. There are different panels, converters and so forth which may be chosen, but the cost is fixed. Two jobs have been sold in Town so far and representatives from the company will be in Town for twenty weeks. June 21st will be the first installation event where the public may come and see a system in person. Details regarding this event will be forthcoming. Encon is also seeking individuals to be solar ambassadors, people who can spread the word and give the public Intel regarding the solar panel process. Mr. Goeschel is a solar ambassador/liason and interested parties who visit the Town Hall may gain information from him.

This program is strictly residential and the Town is looking into a sister program for commercial properties. The Town gains credit for a solar system through the selling of a solar systems within the Town. Mr. Goeschel stated that a link will also be placed on the new website, which should go live on May 23rd, 2014. Mr. Chjbot stated that his company examines an individual's roof space and electric bill, and designs a system which works best for that particular home. They show you what the state rebate will be for them and how good of a site they have. There are several financing packages available and the end goal is to have a clean energy Town.

III. Approval of Minutes

Regular Meeting Minutes of May 6th, 2014.

There were no corrections.

- ****Motion (2)**

Ms. Palazzo moved to approve the Planning Commission Meeting Minutes of May 6th, 2014.

Mr. Covino seconded the motion.

Vote: 6-0-0. Motion passed.

IV. Subdivisions and Resubdivisions

- A. Pazz Construction, LLC, applicant/owner; Application for a waiver request from Section 23.58 of the East Lyme Subdivision Regulations to reduce a buffer along the northern property line for a proposed eight lot subdivision of property located at 233 Upper Pattagansett Road, East Lyme, CT, property identified on the East Lyme Assessor's Map 39.0, Lot 6.

Mr. Schuch reminded the Commission that the Public Hearing conducted by the Planning Commission closed on March 18th 2014. Since an Alternate has been seated as a Regular Member for this Meeting,

Mr. Schuch asked if Mr. Hess had familiarized himself with this Application and whether he felt confident that he could make a decision. Mr. Hess stated that he had familiarized himself with the pertinent information and that he did feel confident that he would be able to render a decision. Mr. Schuch summarized some of the deliberation discussion that occurred during the last Meeting. He reminded the Commission that they had asked Mr. Mulholland for some feedback regarding this Application and pointed out the Memorandum dated May 20th, 2014 included in the Member packet (Attachment 1). Mr. Schuch read Mr. Mulholland's Memo into the record.

Mr. Goeschel stated that he also included his Memo from May 14th, 2014 in the Member packet (Attachment 2), and he informed the Commission that he highlighted all the relevant information and criteria that the Commission should examine when making their decision. Mr. Goeschel stated that the reasoning behind the decision should be given for the record and that the Planning Commission is acting as an agent for the Zoning Commission. He also stated that action on the waiver should be completed prior to the Application itself. Mr. Schuch asked the Commission if they felt comfortable with the new information provided; if they have digested it enough that they're able to render a decision.

Mr. Balantic asked why Mr. Mulholland specified Cedar trees and Mr. Goeschel said that it is a typo, and should read "caliper." The Commission discussed the plantings and Mr. Mulholland's Memo at length. The Commission next discussed Mr. Goeschel's May 14th, 2014 Memorandum deciding that a portion of page 490 was not relevant, given that the Town will never take over the road. Mr. Balantic said that they have reviewed a large amount of information and that he wanted to make sure that nothing was left out in the drafting of a decision. Mr. Goeschel referred him back to his own Memorandum of April 11th, 2014 noting that he had included potential motions for the Commission's review. Mr. Balantic suggested re-lettering the reasons listed on Mr. Goeschel's April 14th, 2014 Memo since item B., the right of way is redundant and better addressed in item H. Mr. Schuch suggested doing a Motion for the waiver and a separate Motion for the Subdivision Application in order to keep the reasoning clear and manageable.

- ****Motion (3)**

Mr. Balantic said the following-

Based on the above findings indicated in the Memorandum from Gary A. Goeschel II, Director of Planning, dated April 11, 2014, the Commission moves to Grant the Waiver request from 23.5 B of the Zoning Regulations for a reduction in the buffer along the northern property line associated with the Application of Pazz and Construction, LLC, the installation of a shared driveway for a eight lot subdivision of 14.75 acres of property located at 233 Upper Pattagansett Road, East Lyme, CT, property identified on the East Lyme Assessor's Map 39.0, Lot 11 and Plans entitled "Conservation Design Development, 233 Upper Pattagansett Road, East Lyme, CT; dated December 19, 2013 and revised through January 29, 2014 prepared for Pazz and Construction, LLC by J. Robert Pfanner, P.E., L.S. of J. Robert Pfanner & Associates, P.C., Niantic, CT for the following reasons:

- A. As previously stated, at the time of application the applicant provided a waiver request from Section 23 B for a reduced buffer along the northern property line;**

- B. The parcel contains an area of steep slopes and on site inland wetlands on the easterly end of the property. In addition, there are existing stone walls along the Upper Pattagansett ROW;
- C. Although the applicant seeks a waiver from the buffer requirement along the northern property line, the proposed plan indicates the installation of evergreen plantings along both sides of the proposed common driveway effectively providing a vegetative buffer intended by the regulations. As such, the granting of this waiver would not have a significantly adverse effect upon adjacent property, the environment, or the public health and safety;
- D. As the proposed plan utilizes smaller lots allowing the construction to be concentrated on the portion of the parcel best suited for development, protects environmentally sensitive areas such as wetlands, and minimizes grading, excavation, and impervious surface, the proposed plan would be consistent with Section 3.1.1, Single-Family Housing, of the POCD. As such, the granting of the waiver will not be in conflict with the Plan of Conservation and Development;
- E. The requested waiver does not propose to vary any engineering standard;
- F. The applicant is requesting only to waive the buffer requirement in order to construct a driveway within the required 40-foot buffer. However, the applicant proposes the installation of evergreen plantings along both sides of the proposed common driveway effectively providing a vegetative buffer to screen development on the proposed lots from existing contiguous lots as intended by the regulations; and
- G. There is an existing Private Right-of-Way (ROW) to access open space on the adjacent parcel along the northern property line as well as steep slopes. As previously noted, the abutting property affected by the waiver request, is Zoned AHD and slated for a 60-unit residential affordable housing development. Granting the requested waiver directs development to those land areas most suitable for development as proposed. As the plan proposes to vegetate both sides of the proposed common driveway along the northerly property boundary, it allows for a more attractive and efficient use of land;

Ms. Palazzo seconded the motion.

Vote: 6-0-0. Motion passed.

Mr. Balantic stated that in regards to the subdivision he would insert a blurb regarding sightline safety since that seemed to be a concern in their discussion. He also recommended stating an easement in favor of the Town to ensure that they are maintained or replaced rather than the words "not removed."

- ****Motion (4)**

Mr. Balantic stated-

Based on the above Findings indicated in the Memorandum from Gary A. Goeschel II, Director of Planning, dated April 11, 2014, the Commission Moves to Approve the application known as Application of Pazz and Construction for a Section 23, Conservation Design Development eight lot subdivision of 14.75 acres of property located at 233 Upper Pattagansett Road, East Lyme, CT, property identified on the East Lyme Assessor's Map 39.0, Lot 11 and Plans entitled "Conservation Design Development", 233 Upper Pattagansett Road, East Lyme, CT; dated December 19, 2013 and revised through January 29, 2014 prepared for Pazz and Construction, LLC by J. Robert Pfanner, P.E., L.S. of J. Robert Pfanner & Associates, P.C., Niantic, CT and further subject to the following administrative requirements and required modifications to the site plan and other materials submitted in support of this application:

1. An erosion and sedimentation bond in the amount of \$8,000.00 dollars shall be posted in a form acceptable to the Planning Commission and satisfactory to the Town Planner for the proposed installation of drywells, roof leader tie-ins, rain gardens and associated site work (e.g. clearing, grading, excavation and filling).
2. A deed restriction to ensure that the drywells and rain gardens are constructed and maintained in a functional manner. A Note shall be placed on the Record Subdivision Plan with reference to this deed restriction.
3. An Erosion and Sedimentation Plan narrative shall be added to the Record Subdivision Plan.
4. A Conservation Easement for the proposed Open Space shall be filed prior to any construction.
5. Pursuant to Section 23.5 B (2) of the East Lyme Zoning Regulations, a 20-40-foot wide vegetative buffer with consideration of sightline safety by the Town Engineer. The buffer of evergreen trees (min 3-1/2 caliper) comprised of two (2) rows staggered every 15-20 feet on center along the frontage of the proposed development shall be established to screen the proposed development from the arterial or collector road to the satisfaction of the Town Planner. In addition, the plantings shall be incorporated into a conservation easement in favor of the Town to ensure they are maintained or replaced with suitable substitutes.
6. The existing invasive vegetation along the frontage shall be removed and the existing stone wall shall be re-built to further enhance the roadside character.

The above items shall be accomplished prior to the filing of the subdivision on the land records, or other documentation of planning approval and no site work shall commence until all applicable conditions are satisfied.

This approval is specific to the subdivision plan submitted as application of Pazz Construction, LLC aka Pazz & Construction, LLC, any changes in the subdivision plan other than those identified herein shall

constitute a new application and the modifications of this approval and any change in the development plan layout other than those identified herein shall constitute a new application.

The owner/applicant shall be bound by the provisions of this Application and Approval.

Ms. Palazzo seconded the motion.

Vote: 6-0-0. Motion passed.

The Commission took a short comfort break at 9:00 PM.

The Planning Commission reconvened the Meeting at 9:08 PM.

V. Zoning Referrals

The Commission opted to table the Referral until the next Regular Meeting, at which time Mr. Goeschel will provide a Memo regarding this referral.

VI 8-24 Referral

There were none.

VII Other Business

A. New Business

The New Business was moved to the beginning of the Meeting.

B. Old Business

Mr. Schuch stated that due to the late hour the Reports and UCONN project discussion would be tabled until the next Meeting.

Adjournment

- ****Motion (5)**

Mr. Covino moved to adjourn the Planning Commission Meeting at 9:20 PM.

Ms. Palazzo seconded the motion.

Vote: 6-0-0. Motion passed.

Respectfully submitted,

Brooke D. Stevens

Brooke Stevens,
Recording Secretary

Attachment 1

Town of

P.O. Drawer 519

Zoning Department

William Mulholland,
Zoning Official



East Lyme

108 Pennsylvania Ave

Niantic, Connecticut 06357

(860) 691-4114

Fax (860) 691-0351

May 20, 2014

Brian Schuch, Chairman
Planning Commission
Town of East Lyme
PO Box 519
Niantic CT 06357

RE: Pazz & Construction, LLC
Upper Pattagansett Sudivision

Dear Mr. Schuch:

I am writing in response to your request for an interpretation of Section 23.5B, (1) & (2) as it relates to a certain subdivision plan identified as follows:

Conservation Design Development, 233 Upper Pattagansett Road, East Lyme Connecticut, dated December 19, 2013 and revised through January 29, 2014. Prepared for Pazz & Construction, LLC, by J. Robert Pfanner, PE, LS, of East Lyme, Connecticut.

First, with respect to the adjoining property line buffer waiver, as you are aware the Planning Commission may waive or reduce this buffer "when variations in topography, natural features and compatible in land uses obviate the need for such a buffer..." The plan reveals that a portion of the northerly buffer areas propose to contain an eighteen foot and twelve foot, in part, driveway which will serve several of the proposed lots. In addition to the driveway, this portion of the plan also shows substantial plantings. You should also note two other significant factors; an approved affordable development on the land to the North, as well as an adjoining right of way providing access to the affordable development as well as access to portions of open space for the Nottingham Hill Subdivision.

In addition there are significant slopes on most of the adjoining property in the vicinity of the mutual boundary line which both provides natural screening; and in addition makes it unlikely that residential construction would occur in the immediate area of the mutual boundary. As the Commission, I am sure, is aware, this buffer requirement exists to protect adjoining properties from what may appear to be more dense development achieved by the Conservation Subdivision. Given the natural features, and the existing right of way near the property boundary of the adjoining land, a buffer on the land proposed to be subdivided would seem to serve no useful purpose. Therefore, a waiver

may be appropriate. This would be consistent with the purpose of providing more flexible design criteria as provided for in section 23.1. Moreover it is clearly consistent with the use occurring on the property to the north in the immediate vicinity of the boundary

As the commission may recall, the Zoning and Planning Commission combined subcommittee on these regulations intended to establish flexible development regulations to allow creativity in subdivision design. The objectives of A thru F listed under Section 23.1 (of Zoning Regulations) are general in nature and are not necessarily applicable in all settings. While the intent of these objectives is to provide direction and overall goals during the development review process, these objectives may not be obtained in every physical setting.

In my view the application demonstrates zoning compliance with items A thru D. The proposed conservation easement satisfies E and F.

In addition you have also asked me to review the applicability, if any, of Section 23.5B (2) of the plan. This section provides for road front screening or additional front yard setbacks under certain circumstances. In my view the only portion of this section which may be applicable to the Plan is contained in the first sentence. The balance of this section applies only to the instance of scenic areas and vistas—which are “prominently and locally” significant—which is not the case here.

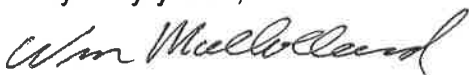
The first sentence may have applicability as it applies to “non-wooded areas and or open agrarian landscapes”. My initial view of the property focused on the fact that it was composed of a single family house or large lot with substantial open grass area; as a result I believed this portion of the regulation would not be applicable. However, given the broad and undefined nature of the regulatory standards, an equally plausible argument supporting its applicability could be made.

I would suggest that any approval be conditioned on the applicant's planting of a staggered double row of 3 ½” cedar evergreens at appropriate spacing along the frontage to achieve zoning compliance with this portion of the regulation.

In conclusion it is my opinion as the Zoning Official that the plan with the additions of the noted plantings and granting of the waiver will be in compliance with the applicable zoning requirements.

If you should have any questions, please contact my office.

Very truly yours,



William Mulholland,
Zoning Official

WM/jl

Town of



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

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P.O. Drawer 519

Department of Planning &
Inland Wetlands

Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent

MEMORANDUM

TO: East Lyme Planning Commission

FROM: Gary A. Goeschel II, Director of Planning / Inland Wetlands Agent

DATE: May 14, 2014

RE: **Application of Pazz and Construction, LLC**, for a waiver request from Section 23.5 B of the East Lyme Subdivision Regulations to reduce a buffer along the northern property line and an eight lot subdivision of 14.75 acres of property located at 233 Upper Pattagansett Road, East Lyme, CT, property identified on the East Lyme Assessor's Map 39.0, Lot 11.

Upon review of the Commission's deliberation regarding the decision for the above referenced application, I thought it may be helpful when making a decision to review the following: 1) Use of standards and criteria, 2) Evaluating evidence, 3) Statement or reasons, and 4) Conditions and modifications.

1) Use of Standards and Criteria

- If an application complies with all aspects of the relevant statutes and regulations, including applicable decision-making standards and criteria, it should be approved. It is improper for a land-use authority to deny or modify an application for reasons that are not properly linked to standards spelled out in the statutes or regulations (*Kolinski v Lawlor*, 177 Conn. 420, (1979)). In addition, although land-use regulations may, in some instances, allow the decision-making body to exercise discretion in reviewing certain aspects of a proposal, that discretion cannot be exercised arbitrarily.
- By the same token, it may in some instances be improper to approve an application unless it is specifically found to meet certain statutory or regulatory criteria. For instance, part of the Inland a Wetlands and Watercourses act, does not allow any application that receives a public hearing to be approved unless the agency finds, on the basis of the record, that a "feasible and prudent alternative does not exist."
- As long as the commission is reasonable in its interpretation and application of statutory and regulatory standards and criteria, a court will be unlikely to second-guess it on matters of

substance (as opposed to procedural issues). The credibility of all witnesses is for the commission to decide, although it should not simply ignore the only expert evidence offered a technical issue, such as the suitability of a site for subsurface sewage disposal (*Feinson v, Conservation Commission*, 180 Conn. 421, 1980; *Huck v Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 542 (1987)).

- CGS Section 8-25 lists several goals and objectives planning commissions must or may consider in formulation their regulations but, does not specify the criteria the commission must use to meet those criteria. As such, it is important the regulatory criteria be sufficiently precise and detailed so as to allow landowners reasonably to determine how they may use their property.
- Under CGS Section 8-26, planning commissions may not approve any subdivisions or resubdivision that would violate any applicable zoning regulations. However, a planning commission may not deny a subdivision application because a zoning violation already exists on the property. The only type of violation to which 8-26 refers is a violation that would be caused by the act of subdividing or resubdividing the property (*Garrison v Planning Board*, 66 Conn. App. 317 (2001)).

2) Evaluating the Evidence

- The courts have given administrative agencies a wide berth in evaluating the testimony and written evidence presented to them. *Huck v Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 542 (1987), the Connecticut Supreme Court said “that an administrative agency is not required to believe any witness, even an expert, nor is it required to use in any particular fashion any of the materials presented to it so long as the conduct of the hearing is fundamentally fair.” An agency need not even accept the advice or conclusions of its own technical staff or consultants (*Laufer v. Conservation Commission*, 24 Conn App 708, 2001).
- However, when expert testimony is offered on a scientific or “technically complex issue” (i.e. one that is not generally within the knowledge of the lay commission members), the agency cannot simply disregard that testimony without providing a credible justification and allowing the applicant and members of the public an opportunity to comment or rebut. Technically complex issue would include septic system or road construction whereas the impact of traffic congestion and street safety is deemed to be well within the range of experience of lay commission members (*Feinson v, Conservation Commission*, 180 Conn. 421, 1980).

3) Statement of Reasons

- Planning commissions are required to state reasons for any decision: 1) to grant or deny a special permit or special exception; 2) to waive any requirement of the zoning regulations (to the extent such waiver is allowed under the zoning regulations according to *Ziska in What’s Legally Required*); 3) to take any action on a subdivision application; or 4) to grant, modify, condition, or deny a coastal site plan.
- Refusing to state the reasons for its decisions takes risks that a reviewing court will also be unwilling or unable to find sufficient reasons to sustain the decision. In my opinion, the best procedure to follow, and the one most beneficial to the applicant, the review court, and the commission itself, is to state for the record *all* appropriate reasons for making any decision.

- I should note, in reviewing Fuller's, Connecticut Practice Series Volume 9, Land Use Law and Practice, Section 15:15 "the planning commission only has the authority to vary the subdivision regulations in limited situations. The subdivision regulations may contain provisions allowing the commission to waive certain requirements with a three-quarters vote of all the members of the commission if (1) the regulations specify the conditions under which a waiver may be granted, (2) conditions exist which affect the subject property and are not generally applicable to other land in the area and (3) waiver of the regulations would not have a significant adverse affect on adjacent property or on public health and safety."
- **It is my opinion a waiver should not be requested unless it is necessary for an effective layout of the subdivision.** In this case, the East Lyme Zoning Regulations granting authority to planning commission to waive a provision of the Zoning Regulations. Without the waiver that is being sought, the layout of the proposed subdivision may significantly change such that it may cause adverse impact on the land or on-site inland wetlands.

4) Conditions and Modifications

- A commission's discretion to place conditions on approval of an application is not unfettered. Some commissions have more flexibility than others to prescribe conditions. In many instances, the amount of discretion a commission has depends on the type of permit sought. **Any conditions placed on a permit should be reasonably designed to accomplish objectives that the commission is authorized to consider. The reasons for requiring and conditions should be logically related, both in nature and extent or amount, to the purpose meant to be served by the governing statutes.**
- Among the most sensitive conditions are those requiring the dedication of portions of, or an interest in, an applicant's property (i.e. easements). In a case entitled *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the United States Supreme Court was unable to find a **proper connection ("nexus") connection between the public benefit to be gained** from an easement and the purpose the permit regulations were supposedly designed to serve (in this case, the protection of the public's ability to see the beach which, the court found the easement requirement to be invalid). In another important case *Dolan v. City of Tigard*, 114 S. Ct 2309, (1994), the United States Supreme court held that the city must demonstrate a **"rough proportionality" between the size and nature of the additional burdens and the size and nature of the required dedications.**
- The only conditions authorized by the statutes are those requiring a bond to secure any modifications of a site plan. As such, the decision should contain instructions as to how the site plan must be modified in order to achieve compliance with the regulations and not condition on an event or occurrence that is not within the control of either the commission or the applicant.
- **A practical test that can be used to determine whether a proposed "condition" is really a "modification" is if the condition is needed to make the subdivision plan conform to the regulations, it can usually be viewed as a legitimate modification.** However, if the condition addresses issues outside the scope of the regulations, it is likely to be held illegal by the courts.

when the planning commission (prejudice) for engineering plans and inspections of the extent the fees allowed, they cover at least the amount of § 8-26.⁹ The fee provision has been amended, but the result is the same.

Wetlands agency to require a reasonable cost of reviewing and approving, but not limited to, the publication of notices and decisions, permit conditions or agency actions as an enforcement function to charge for the cost of decisions concerning wetlands.

The application fee from the record that is the reasonable cost of

for applications, and follows for subdivision applications to vary with the number of applications. They require the publication of a public hearing and a cost of publication is generally application fees, or they

§ 8-26 allows the authority to provide by regulation for a fee of any requirement to land use project in some formula or fee schedule to parking spaces can only be granted if the zoning or planning commission are only allowed where parking spaces which are not in an excess of parking area surrounding the use and are located on the parcel of

⁹Town of Trumbull, 18 Conn. Ltr. Rptr. 215, 1996 WL 677439

¹⁰C.G.S.A. § 8-2c.

land for which the use is proposed.¹² A two-thirds vote of the agency is also necessary to consent to such payments. The fees in lieu of parking are paid into a special municipal fund to be used solely for municipal parking facilities and similar capital expenditures, and cannot be used for operating expenses of any kind except operating expenses of transit facilities.¹³

§ 15:15 Requests for waiver of submission requirements

Research References

West's Key Number Digest, West's Key Number Digest, Zoning and Planning ¶¶ 192, 432, 533

C.J.S., Zoning and Land Planning §§ 85 to 93, 198, 204 to 207, 251

Where the application is for an administrative type of approval, such as a subdivision, special permit, site plan or regulated activities permit, the agency is supposed to review the application based upon its existing land use regulations. This raises the question of whether, and to what extent, the agency can vary the requirements in a particular case. A variance of the zoning regulations requires a variance application to the zoning board of appeals. The zoning commission itself cannot vary the requirements of the special permit or site plan provisions of the zoning regulations. While the issue has apparently not been squarely decided in any reported decisions, it would seem that a zoning board of appeals could grant a variance of requirements for special permits or site plans, provided the applicant made the usual showing of hardship. In one case an application was made to a zoning board of appeals for a special permit to allow a gasoline station which was provided for in the special permit regulations but subject to separation distances from other comparable uses. The agency granted a variance of the separation distance requirement and also approved the special permit. Both decisions were reversed because the board when acting on a special permit was required to follow the special permit regulations, and there was no showing of hardship sufficient to grant the variance.¹ The case shows how the same agency, acting in two different capacities, can be subject to two different sets of standards, but it would appear that if hardship had been shown for a variance of the separation distance requirement that the special permit would also have been upheld.

The planning commission only has the authority to vary the

¹²C.G.S.A. § 8-2c.

¹³C.G.S.A. § 8-2c.

[Section 15:15]

¹Gregorio v. Zoning Board of Ap-

peals of Town of Windsor, 155 Conn. 422, 429, 430, 232 A.2d 330, 334 (1967).

subdivision regulations in limited situations. The subdivision regulations may contain provisions allowing the commission to waive certain requirements by a three-quarters vote of all the members of the commission if (1) the regulations specify the conditions under which a waiver may be granted, (2) conditions exist which affect the subject property and are not generally applicable to other land in the area and (3) waiver of the regulations would not have a significant adverse effect on adjacent property or on public health and safety.² Where the commission grants a waiver under this provision, it must state its reasons on the record.³ If the commission fails to state the reasons why it granted a waiver of the regulations, the trial court should search the record to determine if there were valid reasons.⁴ Prior to this provision in the statute, no variances could be made from any of the subdivision regulations.⁵ A waiver of the provisions is only allowed if the statutory requirements are met. **Since planning commissions are often reluctant to grant waivers in any event, one should not be requested unless it is necessary for an effective layout of a subdivision.** All land is somewhat unique, and as with the hardship requirement in variance applications, the topography of the property is probably the best argument for waiver of a subdivision regulation. **A waiver rarely has an adverse effect on adjacent property or public health and safety.** The main problem often encountered is that the regulations themselves may not allow a waiver for the condition encountered, or all the conditions in the regulations for granting a waiver cannot be complied with. If the commission believes it obtains something of benefit, it may be induced to grant a waiver. **Variances of some of the road design requirements may be granted by the commission because the town will eventually take over the road and have to maintain it, and building roads meeting the subdivision regulations may lead to poor design and future maintenance problems. Generally, waiver requests should be avoided, but if they are going to be made, they should be done before or when the subdivision application is filed.**

²C.G.S.A. § 8-26.

³C.G.S.A. § 8-26.

⁴*Bergren v. Planning and Zoning Commission of Town of Berlin*, 30 Conn.L.Rptr. 212, 216, 2001 WL 950181 (2001) (granting a waiver of a 100 foot buffer provision between an

open space subdivision and surrounding property), and citing other cases for the same concept.

⁵*South East Property Owners and Residents Association v. City Planning Commission of City of New Britain*, 156 Conn. 587, 244 A.2d 394 (1968).

§ 15:16 Subdivision appl

Research References

West's Key Number Digest,
Planning ◊432
C.J.S., Zoning and Land Plan

While a substantial part of a subdivision application may be prepared by an engineer and surveyor, ear access by the applicant's attorney, Engineers, surveyors and solely on their individual and designing roads and s eral and often pragmatic proval. The administrative submitting evidence after of the applicant to meet members which first beco knowledgeable attorney c the application and sugge long run this will save m necessity for a second applic may overlook critical requ and statutes which must l

No matter when coun should be finding out abo the application process, tions, what experts have l of their work and repor subject property can be supplied by the applican nicipal records, counsel s the field, accompanied if or an engineer. Viewin indicates problem areas steep slopes and other t looks good on paper may erty can suggest a re topographical features. ficient areas for constru public sewers are not av planning commissions r not always available init erty will suggest areas built. Some of the con inspect the property eitl problems obvious to co