

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2021

Volume XXV, Issue 1

2021 ANNUAL MEETING

Due to the ongoing Covid-19 Pandemic and the restrictions imposed by the State of Connecticut in regard to public and private gatherings, the Executive Board of the Federation has determined that the 2021 Annual Meeting will be postponed indefinitely. The Federation remains hopeful that the pandemic will come to an end by Summer. Once it becomes clear when this will occur, a new date for a 2021 conference will be set.

In the meantime, the Federation plans to schedule one or more webinars on land use topics of interest. In addition, an announcement will be mailed for length of service awards and lifetime achievement awards. The recipients of the awards will hopefully be made at a meeting this year but may instead be announced at a webinar.

NOT ALL SPECIAL EXCEPTION APPLICATIONS ARE CREATED EQUAL

When a property owner's application for a special exception was rejected by a land use administrator, he appealed the matter to the Superior Court. The appeal was dismissed by the court, and later by the Appellate Court, on the basis that the property owner did not exhaust his administrative remedies.

The court viewed the rejection of the application by the land use administrator as a decision by an officer charged with the enforcement of the zoning regulations. It reached this conclusion by first finding that the zoning regulations provided the administrator with the authority to review applications and decide whether they were complete. Then, since this review was based upon the interpretation of the zoning regulations by the administrator, the decision that the application was incomplete was in fact a decision involving the enforcement of the zoning regulations. Thus, the decision was required to be appealed to the zoning board of appeals before an appeal to court could be taken. *See Farmington-Girard LLC v. Planning & Zoning Commission, 190 Conn. App. 743 (2019).*

GENERAL STANDARDS ALONE SUPPORT DENIAL OF SPECIAL EXCEPTION SAYS COURT

The owner of a parcel of property located within an industrial zone applied for a special permit to operate a crematory. The owners of parcels within the industrial park objected, as did the town's economic development commission. These objectors claimed that approving the crematory would result in a decrease of their property values and negatively affect the character of the industrial park.

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The planning and zoning commission eventually agreed, denying the application on the basis that a crematory would negatively affect the industrial park and the town by depressing property values. Protecting property values was a general standard contained in the zoning regulations that needed to be satisfied before a special permit application could be approved.

The applicant appealed this decision to court alleging that the commission's decision was not based on substantial evidence in the record because its decision was based solely on noncompliance with general standards contained in the zoning regulations.

The appeal found its way to the Appellate Court which found the Commission's decision was supported by substantial evidence. In doing so, the court reaffirmed the rule that noncompliance with general standards contained in the zoning regulations is a sufficient basis to deny a special permit application. *McLoughlin v. Planning & Zoning Commission, 200 Conn. App. 307 (2020).*

LARGE FINE AWARDED BY COURT FOR ILLEGAL JUNKYARD

An award of \$125,000 for fines plus attorney fees was ordered by a court together with an injunction preventing the further use of a residential property as a junkyard and processing center. The homeowner was using her

home in connection with her business, which was to clean out foreclosed properties. She would, under contract with the foreclosing lender, empty a foreclosed home of its contents and then sell or junk these items.

Much of this material ended up at her home, where it was first stored indoors and then overflowed into the front and side yards of her property. This activity continued even after her home was destroyed by fire. Complaints from neighbors eventually resulted in a zoning enforcement action and a blight action.

The award was made solely under C.G.S. Sec. 8-12, which provides for daily fines as well as an award of attorney fees where the violation is deemed to be willful. The evidence clearly demonstrated that the property owner was aware that her use of the residential property as a junkyard was prohibited, yet she ignored repeated notice of violations and a cease and desist order. *See South Windsor v. Lanata, 68 Conn. L. Rptr. 45 (2019).*

DENIAL OF APPLICATION BASED UPON STATE REGULATIONS

An owner of a business with an existing liquor permit applied for a special permit and site plan application. The current permitted use was a billiard hall and bar. The owner now sought to convert the business to an exotic dance establishment and bar. The Commission

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denied the application for one reason which was that under state law, a liquor permit could not be issued to a business that featured unclothed employees.

On appeal to court, the commission's decision was upheld. While local land use commissions can impose stricter requirements on the sale of alcohol, they cannot make less restrictive rules. Thus, the Commission was correct to deny the application where it was certain that state law prohibited the use as it could not approve a use of land that the state prohibited. *Q-Lungian Enterprises Inc. v. Planning & Zoning Commission*, 69 Conn. L. Rptr. 295 (2019).

VALIDITY OF PLANNED DEVELOPMENT DISTRICTS AFFIRMED BY COURT

A superior court decision affirmed that a zoning commission can amend its zoning regulations to include what are known as planned development districts. These districts typically target one or just a few properties for multi-use development and allow the commission to apply detailed standards and controls to the uses permitted therein. In this case, aggrieved neighboring property owners challenged the district as violating the uniformity requirement found in C.G.S. Sec. 8-2 as well as being an improper exercise by the commission of the variance power which is reserved for a zoning board of appeals.

The court dismissed both arguments and found that the commission was within its authority when it adopted the district, finding that such a district does not violate the uniformity requirement as it treated all property within the district the same. As for the variance argument, it was quickly dismissed as the amending of zoning regulations is a specific power given to a zoning commission and does not constitute a variance. *See Tillman v. Planning & Zoning Commission*, 69 Conn. L. Rptr. 409 (2020).

ANNOUNCEMENTS

CFPZA Website

The Federation's website has been up and running for nearly one year. The web address is www.cfpza.org. On the website you can find educational materials published by the Federation as well as news items and Federation webinars. Please take time to visit us.

Workshops

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop to be held at your next meeting. At the price of \$180.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

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