CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2014 Volume XVIII, Issue 1

NO MERGER OF ABUTTING NONCONFORMING LOTS WHERE THEY HAVE SEPARATE DEEDS

When the owner of two abutting nonconforming lots died, his estate sought to sell these undersized lots separately. One lot was vacant while the other was improved with a single family home. While the lots had been owned by the same person, they had been deeded individually and these deeds predated zoning. An opinion was sought from the town's zoning enforcement officer who agreed that the lots were nonconforming but could be sold as individual lots as they had separate deeds. When a neighbor became aware that the vacant lot had been sold and a home was to be constructed on it, he appealed this ZEO determination to the zoning board of appeals.

After hearing testimony that showed that the zoning enforcement officer and his predecessor had always interpreted the zoning regulations so that two abutting nonconforming lots do not merge as long as each has its own deed, the Board upheld the ZEO's decision.

An appeal to court followed. Since the record showed that the ZEO had always interpreted the zoning regulation in a consistent manner and the zoning regulations could be read to support this finding of no merger, the court afforded great deference to this interpretation and upheld it. *See Cockerham v. ZBA, 146 Conn. 355 (2013).*

WHERE ZONING REGULATIONS LACK A DEFINTION, COMMON ONES CAN BE USED

A cease and desist order was issued to a residential property owner because he was allowing his daughter to keep a flatbed truck on the property. The daughter used the truck in connection with a vehicle towing business and lived with her parents part-time. Complaints from neighbors led the ZEO to investigate. Under the zoning regulations, commercial vehicles could be stored at a residence if kept in a building. Since this truck was stored outside, the cease and desist order was issued. An appeal to the ZBA, and later the Court, was taken based upon the issue that the term 'storage' was not defined in the zoning regulations, in particular as to how long a commercial vehicle could stay on the property. It was argued that without such a definition, it was not possible to determine what was storage and what was a transient use.

The trial court and appeals court found that it was proper for the Board to rely on definitions found in a dictionary and other references and apply the definition to this situation. It was not fatal to the enforcement effort that a specific time limit was not included in the zoning regulations. The presence of this truck at her parent's home on a regular and continuing basis was enough to show that this was 'storage'. Thus, the vehicle must be housed in a building. *Grissler v. ZBA, 141 Conn. App. 402.*

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RENEWAL OF SPECIAL PERMIT CAN NOT BE DENIED DUE TO ZONING VIOLATION

A special permit approval to construct an industrial building was due to expire. The owner's application to renew was denied due to his repeated noncompliance with several of the conditions attached to the special permit approval.

The denial was appealed to court, where the court found the Commission erred in denying the renewal. Since there had been no intervening change of conditions since the original approval, the Commission could not deny the extension. The existence of noncompliance and zoning violations did not amount to changed circumstances. *See Handsome v. PZC, 55 Conn. L. Rptr. 267 (2013).*

ILLEGAL EXPANSION FOUND WHERE ONE STORY DWELLING CONVERTED TO THREE STORIES

The owner of a home on a lot that was nonconforming as to its size planned to reconstruct her home. The foundation had deteriorated and needed to be repaired. The homeowner's plan was to remove the existing one story dwelling, repair the foundation, and then build a three story dwelling in its place. The size of the lot was not the only nonconformity. Because the lot was undersized, the existing and planned dwelling would be partially located within required setbacks. The zoning board of appeals granted variances for these setback violations and also agreed with the ZEO that adding additional stories to this dwelling would not increase the nonconforming location of the dwelling within the setbacks.

Upon judicial review, the court found that the sideyard variances were not necessary as the dwelling was built nearly entirely within the existing setback and that any changes slightly reduced the sideyard intrusions. The court disagreed that adding stories to a nonconforming building was permitted under the zoning regulations.

The city's zoning regulations specifically prohibited the enlargement of a nonconforming structure. The court stated that allowing a property owner to make drastic changes to a nonconforming structure, such as by adding two stories, amounted to the interest of the property owner to improve his property being favored over the interests of the community in seeing that nonconforming uses be brought into conformity with the zoning regulations with all the speed that justice will allow. *See Simko v. ZBA, 56 Conn. L. Rptr. 665 (2013).*

GENERAL REQUIREMENTS BASIS FOR DENIAL OF SPECIAL PERMIT

The City of Meriden was the owner of a 6 acre parcel of land located in Wallingford. The parcel was the location of a closed landfill. The City desired to re-open part of the site to use it as a disposal location for road

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sweepings, concrete and other materials generated by public works projects. Pursuant to the zoning regulations, a special permit application was filed to conduct this use in a residential zone.

After a public hearing, the application was denied solely on noncompliance with general standards and considerations contained in the zoning regulations, such as that the proposed use would intensify the existing land fill use and this would have an adverse impact on the surrounding neighborhood.

The Appellate Court found that it was proper for the Commission to deny this special permit application for this general reason as it is well established that general considerations such as public health, safety and welfare, which are enumerated in zoning regulations, may be the basis for the denial of a special permit. *See Meriden v. PZC, 146 Conn. App. 240 (2013).*

DOG GROOMING SAME AS BARBERSHOP

An owner of a single family home in a residential district requested a zoning permit from the ZEO in order to operate a dog grooming business in her attached garage. The permit requested was for a home occupation. The permit was denied on the basis that a dog grooming business, being more akin to a barbershop, was not a permitted home occupation under the regulations. An appeal to the ZBA followed which agreed that the permit could not be issued as the proposed use was not permitted by the zoning regulations.

The court agreed with the ZBA's reasoning that a dog grooming business was more akin to a barbershop in that it would violate a general requirement that a home occupation not generate more than incidental traffic. A dog grooming business, like a barbershop, could be expected to generate more than incidental traffic. Thus, the denial was proper. *See Lowney v. ZBA, 144 Conn. App. 224 (2013).*

ANNOUNCEMENTS

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. At the price of $175.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

Workshop Booklets

Copies of the booklets handed out at workshops are now available to members at the price of $6.00 each and to non-members for $9.00 each.

ABOUT THE EDITOR

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