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TOWN OF KENT
ZONING BOARD OF APPEALS
41 Kent Green Boulevard
P.O. Box 678
Kent, CT 06757

SEPTEMBER 10, 2019 REGULAR MEETING MINUTES

The Town of Kent Zoning Board of Appeals held a regular meeting on September 10, 2019 at 7:00 p.m. in the Kent Town Hall.

1) Call to Order and Roll Call

Mr. DiPentima called the meeting to order at 7:00 p.m. and called the roll.

Board Members Present: Anthony DiPentima, Chairman; Nick Downes, Daniel Murray, John Noneman, Mike VanValkenburg, Anne Bisenius (seated 7:03 p.m.)

Staff Present: Donna M. Hayes

2) Appointment of Alternates(s) to Voting Status.

Mr. DiPentima elevated Ms. Bisenius to voting status at 7:03 p.m..

3) Acceptance or Revision of Agenda

Mr. VanValkenburg moved to accept the agenda as presented. Mr. Downes seconded and the motion carried unanimously.

4) Reading and Approval of Regular Meeting Minutes of May 14, 2019.

Mr. Downes moved to approve the Regular Meeting Minutes as written. Mr. DiPentima seconded and the motion carried unanimously.

5) Recess Meeting. Convene Hearing:

The meeting recessed at 7:02 p.m. and the hearing convened.

5.1. Application #03-19, Joy C. Brown, 463 Segar Mountain Road, relief from §3240, side yard setback, for the construction of a 12' x 12' addition on the westerly side of the existing "tea house", Map 15 Block 22 Lot 67.

Ms. Brown and Mr. Griffin were present to address the Board. Ms. Brown explained that since the last time she was before them she did communicate with a representative of Weantinoge Heritage Land Trust about a possible lot line revision. Ms. Brown said that Weantinoge was not willing to do that but Mr. Paul Elconin, Director of Land Conservation for Weantinoge, sent a letter to the Zoning Board of Appeals stating that they would not object to the requested variance. Mr. DiPentima read the referenced letter into the record.

Ms. Brown was asked several times whether or not she had considered other alternatives to which she replied that she felt the original plan was the best based on the size of the boulder and unfavorable topography.

6) Close Hearing. Brief Recess

Mr. DiPentima closed the hearing at 7:25 p.m.

7) Reconvene Meeting. Action on Appeal(s) Heard

Having no brief recess, the meeting reconvened at 7:25 p.m.

Mr. Murray moved to approve Application #03-19, Joy C. Brown, 463 Segar Mountain Road, relief from §3240, side yard setback, for the construction of a 12' x 12' addition on the westerly side of the existing "tea house", Map 15 Block 22 Lot 67 due to the unusual topography demonstrated and that other options would create an undue amount of work to make the building work any other way than proposed. He continued by saying that the addition would add to the harmony and general purpose of the property and would be aesthetically appropriate based on the property layout. Mr. VanValkenburg seconded.

During discussion it was also noted that granting this approval would not be inconsistent with the current Town of Kent Plan of Conservation and Development.

The motion passed with five (5) affirmative votes by Mr. VanValkenburg, Mr. Noneman, Mr. DiPentima, Mr. Downes and Mr. Murray and one (1) abstention from Ms. Bisenius.

8) Old Business

No action taken.

9) New Business

No action taken.

10) Communications

10.1. Monthly Financials – July, 2018, through June, 2019.

The information was received by the Board and no action was taken.

10.2. Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter – Spring and Summer, 2019 editions

The information was received by the Board and no action was taken.

11) Adjourn

Mr. VanValkenburg moved to adjourn at 7:30 p.m.

Respectfully submitted

Donna M. Hayes
Secretary/Clerk

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TOWN OF KENT
ZONING BOARD OF APPEALS

41 Kent Green Boulevard
P.O. Box 678
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Rec'd 12/11/19 @ 10:10 AM
J. Brady, TC

DECEMBER 10, 2019 REGULAR MEETING MINUTES

The Town of Kent Zoning Board of Appeals held a regular meeting on December 10, 2019 at 7:00 p.m. in the Kent Town Hall.

1) Call to Order and Roll Call

Mr. DiPentima called the meeting to order at 7:15 p.m.

Board Members Present:	Anthony DiPentima, Daniel Murray, Anne Bisenius, Patricia Oris
Staff Present:	Donna Hayes, Secretary/Clerk

2) Appointment of Alternates(s) to Voting Status.

Mr. DiPentima elevated Ms. Oris to voting status.

3) Acceptance or Revision of Agenda

Ms. Bisenius moved to accept the agenda as presented. Mr. Murray seconded and the motion carried unanimously.

4) Reading and Approval of Regular Meeting Minutes of September 10, 2019.

Mr. Murray moved to continue the Reading and Approval of Regular Meeting Minutes of September 10, 2019, to the next regular meeting. Ms. Bisenius seconded and the motion carried unanimously.

5) New Business

5.1. Approval of 2020 Regular Meeting Schedule

Ms. Bisenius moved to approve the 2020 Regular Meeting Schedule as presented. Mr. Murray seconded and the motion carried unanimously.

5.2. Election of Officers

Ms. Bisenius moved to continue agenda items 5.2., 10.1. and 10.2. to the next regularly scheduled meeting. Mr. DiPentima seconded and the motion carried unanimously.

6) Communications

10.1. Monthly Financials – July, 2019, through September, 2019.

10.2. Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter – Fall, 2019 edition

7) Adjourn

Ms. Bisenius moved to adjourn at 7:17 p.m.

Respectfully submitted,

Donna M. Hayes

Donna M. Hayes, CZEO
Secretary Clerk

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Winter 2020 Volume XXIV, Issue 1

LOSS OF NONCONFORMING BUILDING IS A HARDSHIP

An owner of property fronting on Long Island Sound applied for several variances so that he could rebuild a storm-damaged cottage located on the property. The property contained several other dwellings. The cottage was a legal nonconforming building, having been built in 1951 before any zoning regulations had been adopted for the town. Recently adopted zoning regulations required that buildings be constructed at a certain elevation in order to reduce the risk of flood damage and to comply with FEMA regulations.

This regulation, when applied to the nonconforming building, would result in the building height exceeding what was permitted by the zoning regulations. In addition, the building would need to be moved to a different location on the lot where the ground soil could support the new foundation. However, this new location was more conforming as to setbacks than the current location.

The zoning board found that the building height variance was justified due to the application of the building elevation requirements imposed in part by FEMA regulations and the decrease in nonconformity as to building location. An appeal to court was dismissed, after which an appeal was heard by the State Supreme Court.

The State Supreme Court found that it was correct for the board to grant the building height variance because without it, the nonconforming cottage could not have been rebuilt. The loss of a property owner's right to a nonconforming building was viewed by the court as a confiscatory action. In order to prevent this unconstitutional taking of property, the granting of the variance was valid. It made no difference that the property as a whole could still be used as the location for 4 other dwellings – the owner of a legal nonconforming building has a constitutional right to its continued use. *Mayer-Wittmann v. Zoning Board of Appeals, 333 Conn. 624 (2019).*

SAVE THE DATE

The Federation will hold its Annual Conference on March 26, 2020 at the Aqua Turf Country Club in Plantsville CT. The event starts at 5:00 p.m. The program for the Conference will include a presentation on Amending the Affordable Housing Act to better achieve its goal of making housing affordable and not just be a tool for developers. A Flyer is included with this newsletter and registration materials announcing the event will be sent to all members next month.

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Winter 2020 Volume XXIV, Issue 1

BOARD HAS DISCRETION TO NOT CONDITIONALLY APPROVE APPLICATION

A developer filed an application with a municipal water pollution control board for a sewer extension to service a proposed affordable housing development. At the public hearing on the application, the town's public works director testified that the sewage plant did not have enough capacity at that time but that needed repairs and improvements would, within 2-4 years' time, expand capacity to the extent that it could handle the additional flow from the proposed affordable housing development. The developer urged the board to approve its application with the condition that the development would only be built once the anticipated repairs and expansion to the sewage treatment plant were completed.

The board denied the application, finding that the sewage treatment plant did not have the capacity to service the proposed development and a conditional approval would violate long-standing policy and expose the town to risk. An appeal to court followed.

The court eventually ruled that since the application met all of the applicable specific standards in the regulations and the board had the authority to approve it conditionally as proposed by the developer, the board was without discretion to deny it.

The matter was appealed to the Appellate Court by the board. This court agreed with the board's decision to deny the application on the basis that there was insufficient capacity to service the proposed development. In regard to a conditional approval, the appellate court stated that while the board had the authority to make a conditional approval, it had the discretion to not do so. The court also pointed out that the affordable housing statute 8-30g does not apply to an application filed with a WPCA. Thus, the board's denial did not have to be supported by a substantial public interest that outweighs the need for affordable housing. *Summit Saugatuck LLC v. Water Pollution Control Authority, 193 Conn. App. 823 (2019).*

WETLANDS PRESERVATION TOP PRIORITY

An application for a permit to conduct a regulated activity was denied due to a finding that the planned construction of a dwelling would result in the destruction of wetlands. The proposed home would be built upon two small wetlands. While the applicant proposed to create a wetland of greater size than the two that would be lost, the court found that the Commission was correct to deny the application.

First, the developer failed to demonstrate there was no feasible and

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
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Winter 2020 Volume XXIV, Issue 1

prudent alternative to his proposal. The record before the Commission actually contained an approval given to the prior owner of the parcel which showed that a dwelling could be built without the destruction of the wetlands.

Second, C.G.S. Sec. 22a-41(a)(4) provides a hierarchy of considerations for a wetlands commission to consider before approving a permit for a regulated activity, the first being to prevent the pollution of or damage to wetlands. The restoration or creation of wetlands is a much lower priority. The Commission's decision reflects this priority, preserving the existing wetlands rather than allowing their destruction and then replacement by a man-made wetland. *188 Westmont LLC v. Inland Wetlands & Watercourses Agency, 68 Conn. L. Rptr. 209 (2019).*

MIXED-USE DEVELOPMENT NOT AFFORDABLE HOUSING

A denial of an application to construct a mix-use development was appealed under the Affordable Housing Act [C.G.S. Sec. 8-30g]. The application planned for the construction of office and retail space as well as residential housing, 30% of which would be set-aside as affordable as defined by the Act. The Commission denied the application in part because it believed it was not an affordable housing application. The court agreed.

In reaching its decision, the court found that since the application contained nonresidential uses, it did not fit into the definition of an affordable housing application. *Sixty-Five Mile Marsh Hill Road LLC v. Planning & Zoning Commission, 68 Conn. L. Rptr. 385 (2019).*

ANNOUNCEMENTS

Lifetime Achievement Award and Length of Service Award

Nomination forms will be sent out later this month for these awards which will be presented to recipients at the Federation's annual conference. You should begin your process of finding worthy nominees now.

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 setsforth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principle in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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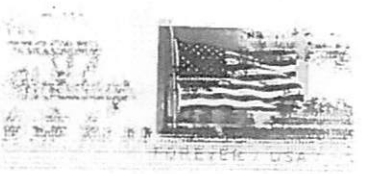

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06757-067878

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 State 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 must 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 had 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.

[CONT. ON NEXT PAGE]

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.

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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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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
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Spring 2020 Volume XXIV, Issue 2

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 bordering house. *See 7 Forest Hill Road LLC v. ZBA, 69 Conn. L. Rptr. 41 (2019).*

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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

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