

# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Fall 2022

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## STATE SUPREME COURT FINDS SPECIAL EXCEPTIONS CAN HAVE TIME LIMITS

A special permit application to construct a large retail store was approved with the condition that completion of the proposed use be done within two years of the date of approval. Like most special exception applications, this one was accompanied by a site plan application. The planning and zoning commission later amended its zoning regulations and removed the two-year completion requirement and substituted instead a requirement that any completion period would comply with the Connecticut General Statutes. The Commission and its town planner interpreted this to mean that in the case of this application where a special permit application was accompanied by a site plan application, the time for completing the site plan under the general statutes would control.

After the now repealed two-year period had expired but before the site plan had expired, the applicant filed an application for an extension to the completion period for the site plan and special exception. The commission approved this application, and this decision was appealed to court. The appeal challenged the commission's decision to extend the completion period.

The issue before the court was whether a time limitation can be imposed on an approval of a special

exception and if it could, what time limit could be imposed. The appeal eventually made its way to our Connecticut Supreme Court which found that "Zoning agencies have authority under Connecticut General Statutes Sec. 8-2 to adopt a regulation under which a special exception permit would expire if construction for the proposed use is not completed within a specified period of time." Furthermore, the Court held that if this authority is exercised, the time limitation cannot conflict with the statutory deadline prescribed for an accompanying site plan.

Thus, a planning and zoning commission or zoning commission has the authority to adopt a regulation placing a time limit on a special exception permit for completing the construction of the proposed use that can equal or exceed the time limit for a site plan. The Supreme Court found that this rule does not conflict with the long-accepted rule that a special exception runs with the land because once construction of the proposed special exception use is completed, it would run with the land. *See International Investors v. Plan & Zoning Commission, 344 Conn. 46 (2022).*

## APPEALS COURT EXPLAINS AUTO DEALER AND REPAIRERS APPROVAL PROCEDURE

The owner of a parcel of property located within a general manufacturing zone filed an application with the

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municipal land use office to use the property as an automotive repair facility and to sell automobiles. The municipal application form was filled out by the applicant with the assistance of town staff. The application stated that it was for a 'motor vehicle' use and referred the application to other municipal boards and offices in accordance with the variance requirements listed on the form.

Notice of the public hearing on the application stated that a hearing would be held on a motor vehicle approval. The Board held the duly noticed hearing after which it approved the application. The reasons for the decision indicated that the Board decided the application as if it was for a variance. An appeal by an abutting property owner followed. The appeal claimed in part that the decision violated the law as it incorporated an incorrect standard of law for the application.

In reaching its decision to sustain the appeal, the Connecticut Court of Appeals restated the law on a zoning board's role on a certificate of location application. Pursuant to Connecticut General Statutes Sec. 14-54, the approval of the proposed location for an automobile dealer and repairers license by a municipal zoning board is a prerequisite to the issuance of a state license to deal in or repair motor vehicles. When a municipal zoning board reviews such an application, it acts as a special agent of the State. In this special capacity, it acts as the local agency for the State to determine

whether a certificate of approval should be issued. Because it is acting as an agent of the State, the board does not look to its zoning regulations to decide the application but instead must apply the correct standard as supplied by state law.

To illustrate this point, the Appellate Court stated that even if an automobile dealer or repairer business is a permitted use within a zone, the zoning board could still decide to deny a certificate of location application. The Appellate Court recognized that since the repeal of Connecticut General Statutes. 14-55, a clear statutory standard was no longer available. Instead, zoning boards are free to decide what factors should be considered in making a decision.

In this appeal, the court ruled that the zoning board of appeals applied the wrong the legal standard when it applied the requirements for a variance application to this application. *See One Elmcroft Stanford LLC v. Zoning Board of Appeals, 213 Conn. App. 200 (2022).*

## RIGHT TO FREE SPEECH INCLUDES FLYING RELIGIOUS FLAG ON CITY FLAGPOLE

When the city of Boston denied an application to fly a Christian flag from a flagpole located outside its City Hall, a lawsuit by the applicant followed. The City had a policy which permitted private entities to fly a flag on the flagpole. The permitting process was

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simple, and all applications were usually approved until the application for the Christian flag. The city based its denial on the premise that if a religious flag was flown on a city flagpole, this would be a violation of the U.S. Constitution's establishment clause. The U.S. Supreme Court found this concern to be misplaced and instead ruled that in denying the application to fly the Christian flag, the City had violated the applicant's First Amendment Right to free speech.

The court opined that it is not a violation of the establishment clause to treat religious speech or expression in the same manner as nonreligious speech. Thus, the city could have avoided this litigation if it treated the religious flag in the same manner as the numerous other flags it approved to fly on the City's flagpole. *See Shurtleff v. City of Boston*, 596 U.S. 1\_\_ (2022) No. 20-1800.

## U.S. COMMISSION ON CIVIL RIGHTS TAKES AIM AT LOCAL ZONING CONTROL IN CT

Hearings have been held by U.S. Commission on Civil Rights this year regarding zoning practices in Connecticut. This Commission is examining local zoning control and whether this control perpetuates racial segregation in our State. A review of the groups invited to testify can lead one to believe that the verdict has already been reached and now we are having the investigation. For example, the Commission speaks favorably of the Fair

Share Act, HB 5429, which failed to pass the state legislature this year. This law would have imposed state control over local zoning in regard to providing affordable housing. With election day fast approaching, now is the time to ask candidates where they stand on local control over zoning.

## ANNOUNCEMENTS

### **Membership Dues**

Notices for this year's annual membership dues were mailed March 1, 2022. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly.

### **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 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 principal 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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