CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
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In its lawsuit, the developer accused the abutting property owner of, among other things, interfering with its plans to construct its development by taking frivolous appeals to court which were bound to be unsuccessful and only served the purpose of delay and causing expense. The property owner raised the defense of what is known as the Noerr-Pennington Doctrine. This doctrine shields a person from liability for petitioning a governmental entity for redress.

The court found that this doctrine applies to an appeal of a decision by a zoning commission and that just because a favorable result was unlikely, it was not frivolous or vexatious for the appeal to be brought. *Procurement LLC v. Ahuja, 197 Conn. App. 696 (2020).*

VARIANCE CANNOT BE APPROVED IF PROPERTY HAS A REASONABLE PERMITTED USE

The owner of a shorefront residentially zoned parcel of land sought to rebuild his home which had been destroyed by Super-Storm Sandy. Due to the revised flood zone regulations issued by FEMA, the proposed replacement building would exceed the permitted building height. The owner sought a variance from the height restriction, which was denied by the zoning board of appeals. The board believed that any hardship was self-created as the proposed building exceeded the building height limit by only 3.5 feet, which the board believed could be met by revising the building plans. An appeal to court followed.

The trial court sustained the appeal for two reasons. First, the court believed the hardship was not self-created as the increased building height was due to the revised FEMA regulations. Second, the proposed building would actually decrease an existing nonconformity in that the new building would now comply with lot coverage requirements which the destroyed building exceeded.

The trial court's ruling was then appealed to the Appellate Court, which reinstated the board's decision and dismissed the appeal. The court found that even though the revised FEMA regulations imposed a hardship on the property owner, this hardship did not prevent the property from being put to a reasonable use. A single-family home could still be built on the property, just not the one the property owner wanted. Disappointment does not provide a hardship worthy of a variance.

In its decision, the court reminds us that "A variance is not a tool of convenience, but one of necessity … They are not to be granted when a reasonable use already is present, or plainly is possible under the regulations but an owner prefers otherwise."

In regard to the elimination of a nonconformity, the court dismissed this argument stating that the creation of a

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new nonconforming aspect to the property, in this case building height, cannot be the basis for a variance even when another nonconformity would be reduced. *Turek v. Zoning Board of Appeals, 196 Conn. App. 122 (2020).*

LOT LINE ADJUSTMENT IS NOT A SUBDIVSION

Just what constitutes a subdivision of land was answered by our State Appellate Court recently. The owner of 2 adjoining parcels of property sought to shift the boundary line shared by the parcels. One lot was 10 acres in size while the other was 15 acres. The lot line would result in a transfer of 10 acres from one lot to the other, resulting in a 20-acre lot and a 5 acres lot. When this plan was presented to the town planner, he referred it the Planning Commission for a determination as to whether it constituted a subdivision of land. Apparently, one of the existing lots had been split off from another parcel a number of years earlier.

The Commission said it was a subdivision due to the large amount of land that was transferred from one lot to the other and that there were actually 3 lots involved due to the earlier lot split. This substantial change, the commission believed, required that a subdivision application be filed. The property owner unsuccessfully appealed to the Superior Court. However, he met a more favorable result with the Appellate Court.

The Appellate Court found that a boundary line change, no matter how large the amount of land is transferred, is not a subdivision. Instead, what constitutes a subdivision of land is clearly setforth in Connecticut General Statutes Sec. 8-18. It is the division of a parcel of land into 3 or more lots. In this case, there were 3 lots before the boundary line adjustment, and there would be only 3 lots afterward. Thus, no subdivision because there were no new lots created by the boundary line adjustment. *500 North Avenue LLC v. Planning Commission, 199 Conn. App. 115 (2020).*

ANNOUNCEMENTS

CFPZA Website

The Federation's website has been up and running for nearly 6 months. 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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PROPOSED CHANGES TO ZONING LAWS ENDANGER SINGLE FAMILY ZONE

A Bill was presented to the State Legislature proposing substantial revisions to Sec. 8-2 of the General Statutes. This statute is part of the enabling statutes that provide authority to municipalities to regulate land use. The purpose of the proposed amendment goes beyond the goal of providing more affordable housing. Instead, its purpose is to "replace segregated living patterns with integrated and balanced living patterns" and "foster inclusive communities based on protected characteristics".

In order to reach these goals, this legislation proposes that certain types of multi-family housing must be regulated in the same fashion as single-family dwellings. Thus, if a single-family home requires only a zoning permit, then a four-unit apartment building must also only require a zoning permit. Furthermore, certain named types of multi-family housing, such as townhouses and triplexes, must be allowed on 10% of a municipality's area and 50% of the area within its town center.

It is the opinion of the Federation that this proposed legislation removes the authority of a local land use agency to preserve what is known as the single-family neighborhood. Instead, the State would usurp this authority and impose in its place a uniform statewide plan. This legislation is unnecessary as nearly all municipalities have taken steps to amend their zoning regulations so that a variety of housing choices are available to residents of this state. The proposed bill requests significant changes to how zoning authority is exercised in Connecticut and continues the uncomfortable trend of transferring power from local government and concentrating it at the state level. Federation members are encouraged to contact their state representative about this legislation.

In addition, members should also submit to www.cfpza.org any efforts they have made to improve housing diversity. The Federation can then present this to the legislature to demonstrate that this radical proposal is unnecessary.

PERSON WHO APPEALED ZONING DECISION PROTECTED FROM LAWSUIT

An eventually successful applicant that gained approval for its special exception application to construct a combined child care apartment housing complex sued an abutting property owner. This abutting property owner had opposed the various applications filed by the developer, both before the planning and zoning commission and then in court.

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