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blocking views of the water. On appeal, the court reversed this decision and found that the variance should have been granted. The court agreed that the Board's consideration of aesthetic issues in evaluating the variance request was proper because such concerns come within the requirement that the granting of the variance complies with the comprehensive plan. However, this concern must give way to the improvement to public safety which results from the construction of a dwelling in compliance with FEMA regulations.

This was especially true in this case where both the POCD and the zoning regulations contained provisions that present and future residences in flood prone areas be brought into compliance with FEMA and State regulations. In regard to a valid hardship, the fact that the new dwelling would be built to reduce existing nonconformities allowed for the approval of the variance. *Turek v. Zoning Board of Appeals,* 66 Conn. L. Rptr. 353 (2018).

AFFORDABLE HOUSING ACT APPLIES TO MUNICIPAL HOUSING AUTHORITY'S APPLICATION

A housing authority's affordable housing application was met with substantial opposition from neighboring property owners. The application proposed to add 50 housing units to an existing 30 unit building. The application was denied by the commission, resulting an appeal to court.

The Commission filed a motion to dismiss the appeal based in part on Connecticut General Statute Sec. 8-51. This state law provides that each housing project of a housing authority is subject to planning, zoning and building regulations. Since the application involved a housing authority project for housing, the Commission argued that the application must comply with its zoning regulations and that the Affordable Housing Act did not apply.

The court disagreed, ruling that the Affordable Housing Act was meant to have a broad reach and could not be limited by this other state law. It is interesting that this is the first case addressing the interplay of these state laws. It should be noted that this is a Superior Court decision which could be appealed to a higher court. *Housing Authority of the Town of North Haven v. Planning & Zoning Commission*, 66 Conn. L. Rptr. 841 (2018).

SIGN BRIGHTNESS AND ILLUMINATION CAN BE REGULATED

Public Act 18-28 amended Connecticut General Statutes Sec. 8-2 by adding additional language which authorizes a zoning commission to regulate the brightness and illumination of advertising signs. Previously, this state law only authorized the regulation of the height, size and location of these signs. The amendment to Sec. 8-2 legalizes a practice already followed by many zoning commissions.

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

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NO ABANDONMENT DUE TO SOLELY TO LAPSE OF TIME

When a property owner failed to rebuild his nonconforming, storm damaged manufacturing building in a timely fashion, he applied to the zoning board of appeals for relief. The town's zoning regulations imposed a 2 year time limit on re-building a nonconforming structure damaged or destroyed by several causes, including storms and acts of God. The property owner made a good faith effort to rebuild within this time period. However, due to delays in getting required federal and state approvals to rebuild, the 2 year time period passed.

The zoning board of appeals granted the requested variance from the 2 year requirement, finding that the imposition of federal and state regulations imposed a valid hardship. The board also believed that the regulation was not mandatory and that it had the authority to ignore the requirement.

On appeal, the court did not address the hardship issue. Instead, the court focused on the Board's interpretation of the regulation. By finding the regulation not mandatory, the Board's decision complied with Connecticut General Statute Sec. 8-2 which holds in part that a nonconforming building cannot be found abandoned due to a lapse of time alone. *Founders Village Homeowners Assoc. v. Zoning Board of Appeals*, 63 Conn. L. Rptr. 533 (2017).

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.

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

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LOT LINE ADJUSTMENT NOT A SUBDIVISION

What constitutes a subdivision of land under Section 8-18 of the Connecticut General Statutes has been clarified by the State Supreme Court. This court ruled that a lot line adjustment, no matter how much it reconfigures already existing lots and transfers land from one lot to another, does not come within the statutory definition of a subdivision.

The factual circumstances that led to this decision concerned a parcel of property which had been divided into four parcels prior to the time subdivision regulations were adopted by the town. A subsequent purchaser of the lots combined one of the lots with another, leaving 3 conforming lots. This purchaser then reconfigured the 3 lots, substantially moving the lot lines. When the map was presented to the land use officer, she decided that since no new lots were created and the lots were all conforming, there was no subdivision of land.

The State Supreme Court agreed with the land use officer's reasoning. It stated that "the appropriate inquiry under Sec. 8-18 is whether one lot has been divided into three or more lots." Thus a lot line revision, no matter how much land is transferred from one lot to another, cannot result in a subdivision of land since no new lot or lots was created. *Cady v. Zoning Board of Appeals,* SC 20011, Supreme Court of Conn., 12/11/18.

SAVE THE DATE

The Federation will hold its Annual Conference on March 28, 2019 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 Authority over Zoning Enforcement and recent attempts to transfer this power to First Selectman and Mayors. Flyers announcing the event will be sent to all members later this month.

FEMA REQUIREMENTS ALLOW FOR APPROVAL OF VARIANCE

The owner of a residential property applied for a variance in regard to building height restrictions in the zoning regulations. The prior 2 story dwelling had been completely destroyed by super-storm Sandy. The new building, due to FEMA imposed foundation base elevation requirements, would exceed the maximum building height by about 5 feet. The new home would have the same lot coverage and living area as the prior home, and would reduce the nonconforming seaside setback.

The Zoning Board of Appeals denied the application, in part, by saying that the excessive building height would detract from the neighborhood by

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Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com