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KEVIN J. CURSEADEN
JOY TOPAZIAN MOORE

TO: City of Milford Planning and Zoning Board

FROM: Kevin J. Curseaden, Esq., Attorney for Applicant

DATE: February 6, 2024

SUBJECT: 104 Edgewater Place, Coastal Site Plan Application, Public Hearing

POSITION: Holding a public hearing on coastal site plan where a public hearing is not required violates the statutory uniformity requirement. Good governance is following the statutes and the Board's existing regulations, so that everyone understands the rules.

ISSUE: A neighbor has requested a public hearing on a coastal site plan application. Coastal site plan applications do not require public hearings

LAW:

Uniformity Requirement.

C.G.S. §8-2: (2) Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. **All zoning regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district**, but the regulations in one district may differ from those in another district. (Emphasis added).

"As the Supreme Court has explained, "[t]he obvious purpose of the requirement of uniformity in the regulations is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike with provision for relief in cases of exceptional difficulty or unusual hardship by action of the zoning board of appeals." Veseskis v. Bristol Zoning Commission, 168 Conn. 358, 360, 362 A.2d 538 (1975); see also Kaufman v. Zoning Commission, 232 Conn. 122, 147, 653 A.2d 798 (1995) (uniformity requirement "serves the interests of providing fair notice to applicants and of ensuring their equal treatment"); Smith Bros. Woodland Management, LLC v. Planning & Zoning Commission, 88 Conn. App. 79, 83–84, 868 A.2d 749 (2005) (uniformity requirement "represents a compromise between the relative inflexible structure of Euclidian zoning and the impermissible favoritism, corruption and violations of the uniformity requirement that could stem from a pure case-by-case approach" [internal quotation marks omitted]); 1 N. Williams, supra, § 32:1, p. at 827 (uniformity requirement "represents a reenactment in statutory form of the general principle underlying the equal protection clause—that all land in similar

circumstance should be zoned alike")." MacKenzie v. Plan. & Zoning Comm'n of Town of Monroe, 146 Conn. App. 406, 431–33, 77 A.3d 904, 921–23 (2013).

Public Hearing Not Required by Statute or Fundamental Fairness.

"A public hearing does not have to be held on a site plan application, where the reviewing agency acts in an administrative capacity, and a public hearing is not required on a site plan by either General Statutes § 8-3 or under the concept of fundamental fairness. §18:1. In general, 9 Conn. Prac., Land Use Law & Prac. § 18:1 (4th ed.).

Only ZBA can vary the Regulations.

C.G.S. §8-6: Only the Zoning Board of Appeals has jurisdiction to vary a regulation:

"(a) The zoning board of appeals shall have the following powers and duties: ... (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where..."

ARGUMENT: The property owners have vested property rights. They have a right to use their property in a manner allowed by the regulations. They also have a right for an application to move forward in a timely manner. They are entitled to know what the regulations require prior to making an application. They started this process following all of the required regulations and procedures in March 2023. They have received inland wetlands approval, DEEP approval, City Engineer approval, City Planner certification and Zoning Enforcement Officer confirmation that application complies with the zoning regulations

The uniformity requirement prevents case-by-case variance of regulatory requirements by the zoning commission in a given district thereby avoiding the arbitrary and discriminatory use of the police power which the statute was designed to prevent.

The Board cannot waive or vary its own regulations to require a public hearing in some instances in for the same type of application in the same zone and not in others. Per C.G.S §8-6, only the Zoning Board of Appeals can vary the zoning regulations.

Unknowns in regulations are possibly the most damaging. Lack of clarity and transparency, not only violates the uniformity requirements of C.G.S. §8-2 by treating one property owner different than another with no established standard, it also creates havoc. Property owners, land use professionals, staff and neighbors – no one knows when a public hearing

For example, if a public hearing is granted here with one or two neighbors requesting it, what happens when the Board decides not to hold a public hearing for some neighbor in the future? A real risk to the Board's credibility (good governance) is when politically popular projects are not required to have public hearings and politically unpopular projects are.

17 Maddox coastal site plan application for a two-family house– two neighbors requested a public hearing, and the Board decided the project did not rise to the level that would require a public hearing

and did not hold a public hearing. Neighbors appealed to the Superior Court, McCloud v. Milford PZ, et al., and Judge Frechette agreed with the Board that it was not required to hold a public hearing.

125-135 Broad Street site plan application for 4-5 apartment buildings a couple of years ago became a public hearing due to a large amount of public opposition. In that case, at least 34 people emailed the Board in opposition to the project and requesting a public hearing.

Additionally, it is important to note that single-family homes are exempt from coastal site plan review approval unless located within 100' of a coastal resource. This application is already receiving the additional scrutiny required by the statute due to its location. Further scrutiny by subjecting it to a public hearing is not required.

Whether a public hearing is required should not be determined on a case-by-case basis. If the Board believes there should be an option for public hearings on coastal site plans, the Board should revise the regulations to allow public hearings similar to the inland wetland regulations which require a public hearing if "a petition signed by at least twenty-five persons requesting a hearing is filed with the Agency not later than fourteen days after the receipt of such application...," or similar to your own regulations that require a public hearing:

MZR SECTION 10.5 PROTEST OF ZONE CHANGE Where a protest is filed with the Planning & Zoning Board at a public hearing on a proposed amendment signed by the owners of 20 percent or more of the area of the lots included in such proposed change, or of the lots within 500 feet in all directions of the lots included in the proposed change, such change shall not be adopted except by a vote of two-thirds of the entire membership of said Board.

CONCLUSION:

Holding a public hearing on a coastal site plan application violates the uniformity requirement, and the applicants' property rights protected by federal, state and local law.

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TO: City of Milford Planning and Zoning Board

FROM: Kevin J. Curseaden, Esq., Attorney for Applicant

DATE: February 6, 2024

SUBJECT: 104 Edgewater Place, Coastal Site Plan Application, Intervenor Petition

POSITION: Verified pleading filed by Mr. McKenna for an Environmental Intervention as allowed in Connecticut General Statutes §22a-19 fails to meet the statutory standard, and the petition should be dismissed.

ISSUE: A verified pleading has been filed by Mr. McKenna for an Environmental Intervention as allowed in Connecticut General Statutes §22a-19.

FACTS: See verified pleading attached. Paragraph 4 merely alleges violations of the coastal site plan requirements. Notably, it does not allege any specific type, location, amount of "pollution, impairment or destruction," nor what specific resource is impacted or how. Likewise, Paragraph 4.a. does not allege any "pollution, impairment or destruction." Paragraph 4.b. does not allege any "pollution, impairment or destruction." Paragraph 4.c. does not allege any "pollution, impairment or destruction." Paragraph 5 simply recites the statutory language.

LAW: The Connecticut Environmental Protection Act (CEPA), General Statutes §22a-14 through 22a-20, was enacted in May 1971 with the purpose of protecting the public trust in the air, water, and other natural resources within the State of Connecticut. The act created two remedies to protect the natural resources of the State including bringing an action in court for injunctive and declaratory relief, and the authority for anyone, broadly defined, to intervene in an administrative proceeding to raise environmental issues in accordance with §22a-19.

The law allows an intervention when the intervenor contends that the proposed activities are "reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or other natural resources of the state." An intervention must be done through a "verified pleading," but no specific form is required.

Essentially, the law allows for submission of the intervention to the Planning and Zoning Board, and requires that the petitioner be heard as a party to the application. The petitioner must be notified of any meetings, hearings, new material submitted, etc. and the Commission must allow for the petitioner to voice their environmental concerns, offer evidence/testimony.

The law allows for the intervenor to raise only environmental concerns that are within the jurisdiction of the particular agency conducting the proceeding. Furthermore, the intervention must include "***specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment, or destruction..." C.G.S. §22a-19(a)(2).*** Burden of proof is on the intervenor. An ***intervention does not supply sufficient evidence for denial of the application if it simply recites the statutory language***.

C.G.S. §22a-19: "may intervene as a party .. . " - upon the filing of an intervention petition, the CEPA intervenor is a party. "Section 22a-19(a) makes intervention a matter of right ***once a verified pleading is filed complying with the statute***, whether or not those allegations ultimately prove to be unfounded. We have declared that the statute 'permits any person, on the filing of a verified pleading, intervene in any administrative proceeding ***for the limited purpose of raising environmental issues***.' Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247,248 n.2, 470 A.2d 1214 (1984)." Red Hill Coalition, Inc. v. Town Plan & Zoning Commission, 212 Conn. 727, 734 (1989); Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483,489,499 (1978). (Emphasis added).

"Evidence of general environmental impacts, mere speculation or general concerns do not qualify as substantial evidence. Connecticut Fund for the Environment. Inc. v. Stamford, 192 Conn. 247, 250, 470 A.2d 1214 Environmental Interventions (1984)." River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 71 (2004).

Intervention is for environmental issues within jurisdiction of Board only:

"§ 22a-19 grants standing to intervenors to raise only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the part seeks to intervene." Nizzardo v. State Traffic Commission, 259 Conn. 131, 148 (2002).

"An intervenor pursuant to statute permitting a party to intervene in a proceeding to assert that proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, effect of unreasonably polluting, impairing or destroying public trust in air, water or other natural resources of the state has standing to appeal from the decision of an inland wetlands commission **only for the purpose of raising claims that are within the zone of interests that are protected under the Inland Wetlands and Watercourses Act, i.e., claims alleging the pollution, impairment or destruction of the state's inland wetlands and watercourses**. C.G.S.A. §§ 22a–19, 22a–43." Finley v. Inland Wetlands Comm'n of Town of Orange, 289 Conn. 12, 959 A.2d 569 (2008). (Emphasis added).

In Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247 (1984) the Connecticut Supreme Court held that § 22a-19 does not expand the jurisdiction of the agency to consider any environmental issue raised in the intervention petition. Thus, an intervenor could not raise air pollution issues before a wetlands agency.

ARGUMENT: The verified pleading does not comply with the statute. The allegations in paragraphs 4 & 5 are not specific environmental claims that were intended to be protected by §22a-19. The pleading fails to "contain specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state..." as required by C.G.S. §22a-19(a)(2).

Specifically, the verified pleading does not state any specific allegation of pollution, impairment or destruction, or any specifical allegation of environmental harm. Rather, it merely regurgitates statutory definition language from the CAM Act.

The verified pleading is required to give the reader an understanding of what environmental claim is being alleged. That cannot be deduced from the verified pleading. There is no way of knowing what the actual environmental claim(s) are from reading the verified pleading.

Further, the intervenor is conflating the general CAM Act provisions with environmental claims. CAM Act provisions and environmental concerns are not equivalent. While review of compliance with the CAM Act is within this Board's jurisdiction, consider what environmental concerns are within this Board's jurisdiction. Environmental concerns and adverse impacts to coastal resources may be caused by pollution, but there is the specifical allegation of pollution. There is only a violation of the general definitions contained in the CAM Act C.G.S. §22a-93.

Additionally, the intervenor has not, as of 1:15 PM the day of the hearing, provided any expert report or other information to support claims of environmental harm.

CONCLUSION:

The intervention should be dismissed without hearing further evidence on the matter.

Connecticut General Statutes Annotated
Title 22a. Environmental Protection (Refs & Annos)
Chapter 439. Department of Energy and Environmental Protection. State Policy (Refs & Annos)
Part II. General Provisions

C.G.S.A. § 22a-19

§ 22a-19. Administrative proceedings

Effective: October 1, 2013

Currentness

(a) (1) In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.

(2) The verified pleading shall contain specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates an issue within the reviewing authority's jurisdiction. For purposes of this section, "reviewing authority" means the board, commission or other decision-making authority in any administrative, licensing or other proceeding or the court in any judicial review.

(b) In any administrative, licensing or other proceeding, the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

Credits

(1971, P.A. 96, § 6; 2006, P.A. 06-196, § 256, eff. June 7, 2006; 2013, P.A. 13-186, § 1.)

Notes of Decisions (93)

C. G. S. A. § 22a-19, CT ST § 22a-19
The statutes and Constitution are current with all enactments of the 2023 Regular Session enrolled and approved by the Governor on or before February 14, 2023 and effective on or before February 14, 2023.

End of Document

VERIFIED NOTICE OF INTERVENTION

TO: The Planning and Zoning Board of the City of Milford.

RE: Petition of Kevin Curseaden, Esq. for a Coastal Site Plan Review to construct a single family dwelling on Map 045, Block 513, Parcel 39 (the "Petition").

PREMISES: 104 Edgewater Place, Milford, Connecticut (the "Site").

OWNERS: Brenton C. Artz (the "Owner").

Christopher McKenna (the "Intervenor"), an owner of the premises at 24 Rose Street, Milford, Connecticut, hereby intervenes in the proceeding with respect to the above-referenced Petition pursuant to Section 22a-19 of the Connecticut General Statutes and represents as follows:

1. Section 22a-19 of the Connecticut General Statutes states, in part, that any person may intervene as a party upon the filing of a verified pleading asserting that the proceeding involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the State of Connecticut.

2. Coastal Resources as defined in the Connecticut Coastal Management Act, Chapter 444, Sections 22a-90 et seq., of the Connecticut General Statutes, which is incorporated herein by reference, exist upon the Site.

3. Pursuant to the Petition, the Owner proposes to conduct certain activities upon the Site including the construction of a single family home and related site improvements (collectively, the "Activities").

4. The Activities conducted by the Owners upon the Site and proposed to be conducted are inconsistent with the legislative goals and policies of, and standards required for approval of a coastal site plan application, pursuant to the Connecticut Coastal Management Act in several ways including but not limited to the following:

a. The Petition fails to satisfy all standards required pursuant to the Milford Zoning Regulations for site plan approval for a residential building lot for construction and use of a single-family dwelling, as required pursuant to Conn. Gen. Stat. Sec. 22a-109.

b. The Petition involves locating a non-water-dependent use upon the Site that is physically suited for water-dependent uses and associated facilities; it reduces the utility of the Site for water-dependent-uses and associated facilities; it replaces water-dependent uses with a non-water dependent use; it provides no public access to marine or tidal waters and substantially reduces and inhibits the existing and potential future public access; and it degrades the visual quality of scenic vistas of coastal resources as viewed from adjacent public ways. *See* Conn. Gen. Stat. Sec. 22a-93(17) (Definitions), and Conn. Gen. Stat. Sec. 22a-105.

c. The Petition will degrade natural erosion patterns and natural or existing drainage patterns through the significant alteration of groundwater flow and recharge and volume of runoff; C.G.S. Sec. 22a-93(15)(C), (D); will degrade visual quality through significant alteration of the natural features of vistas and viewpoints; Sec. 22a-93(15)(F); and may have additional adverse impacts including degrading or destroying essential wildlife habitat and degrading tidal wetlands and shorefronts through significant alteration of their natural characteristics or function; C.G.S. Sec. 22a-93(15)(G), (H).

5. The Activities that have been conducted and that are proposed to be conducted by the Owners upon the Site are reasonably likely to have the effect of unreasonably polluting and/or impairing the air, water or other resources of the State of Connecticut or destroying the public trust in them.

6. The Intervenor, pursuant to Section 1-227 of the Connecticut General Statutes, requests copies of all filings and written notice by mail of all meetings and/or hearings to be held, conducted or issued in connection with the Petition. Such filings and notices should be sent to counsel for the Intervenor: Joel Z. Green, Esquire, Green and Gross, P.C., 1087 Broad Street, Bridgeport, CT 06604.

WHEREFORE, the Intervenor hereby intervenes in this Proceeding pursuant to this Verified Notice of Intervention.

THE INTERVENOR,
CHRISTOPHER MCKENNA

BY _____

Joel Z. Green
Green and Gross P.C.
1087 Broad Street
Bridgeport, CT
(203) 335-5141

STATE OF CONNECTICUT :
: ss: Milford
COUNTY OF FAIRFIELD :

I, Christopher McKenna, being duly sworn, does depose and say that:

1. I am an owner of the premises at 24 Rose Street, Milford, Connecticut.

2. I have read the foregoing Verified Notice of Intervention and the allegations contained therein are true to the best of my knowledge, information and belief.

Christopher McKenna

Subscribed and sworn to before me this 16th day of January, 2024.

Irene Myshrall
Notary Public

IRENE MYSHRALL
Notary Public, State of Connecticut
My Commission Expires February 28, 2024