

CONNECTICUT ZONING BOARDS OF APPEAL

NEWLY REVISED

6TH EDITION

By: Thomas P. Byrne
Steven E. Byrne

Set Back Lines Practical Confiscation

In the case of *Chevron Oil Company v. Zoning Board of Appeals*, 170 Conn. 146 the Court found that the zoning board of appeals erred in refusing to grant a variance of a set back requirement in the zoning regulations that any building in a business zone be set back forty feet from the boundary of a residence zone. The court found that the application of the set back regulation to the property in question, because of its location and shape, would restrict its use to less than fifteen per cent of its area. That restriction would apply to any permitted use of the property. In its decision the court stated, "Zoning regulations, so far as they reasonably promote the public health, safety and welfare, are constitutional even though their effect may be to limit the exercise of private property rights."³⁷ An ordinance which permanently restricts the use of land for any reasonable purpose, however, goes beyond permissible regulation and amounts to practical confiscation.³⁸

"Short of regulation which finally restricts the use of property for any reasonable purpose resulting in a practical confiscation, the determination of whether taking has occurred must be made on the facts of each case with consideration being given not only to the degree of diminution in the value of the land but also to the nature and degree of public harm to be prevented and to the alternatives available to the landowner. The financial effect to a particular owner must be balanced against the health, safety and welfare of the community."³⁹

"There was no practical confiscation in the present case, since a portion of the subject property could be used for some permitted use if the variance were not granted. The application of the set back regulation, however, would appropriate more than 85% of the property for the public welfare without payment of compensation. The extent of that deprivation must be considered in light of the evils which the regulation has been designed to prevent. As already noted, the Plaintiff presented evidence to show that the

buffer zone between business and residential property would be effectively maintained if the variance were granted. Moreover, the trial court concluded that the granting of the variance would not adversely affect the use and value of the residential land sought to be protected by the set back requirement, and the defendant has printed no evidence to refute that conclusion. In considering the diminution in the value of the land, the degree of public harm to be prevented, and the alternatives available to the landowner, the trial court concluded that the application of the set back requirement would be equivalent to confiscation."

Other courts have found virtual confiscation to occur where the application of set back regulations reduced the usable area of a lot to an unusually small size.⁴⁰

Variance for Uses Not Permitted in the Zoning Regulations

The case of *Bradley v. Zoning Board of Appeals*, 165 Conn. 389 involved an appeal from the grant of a variance by the zoning board of appeals to permit the erection of a 51 unit apartment building for housing of the elderly in a single family residential zone. In holding that the zoning board of appeals had no authority to grant the particular variance the court stated at page 393 of its decision, "the general policy enunciated in cases involving the granting of variances has been legislatively expressed in Section 8-6 (3) of the General Statutes, which authorizes zoning boards of appeal to determine and vary the application of the zoning by-laws, ordinances or regulations in harmony with their general purpose. To allow zoning boards of appeal to grant variances authorizing uses nowhere permitted in the zoning regulations of the Town would fly in the face of that clearly expressed policy. To do so would, in effect, give zoning boards the capacity to shape the development of the community with little or no regard for the community plan as expressed in the general zoning regulations and would invite the evils which this court has described in relation to spot zoning. The vice of spot zoning lies in the fact that it singles out for special treatment a lot of small area in a way that does not

further such a comprehensive plan.⁴¹ Further, we fail to see how the authorization of a use not permitted in the zoning regulations possibly could be in harmony with their intent and purpose. Since there was no regulation permitting apartment-type dwellings anywhere in the Town of Westport, there are concomitantly no standards or safeguards contained in the regulations pertaining to them nor regulations concerning further apartment-type development. The Westport Zoning Regulations provide only for detached residential dwellings, so that any variance must be in harmony with the development of detached housing.”

In the Bradley case the court continued its discussion of this issue by stating at page 395 of its decision “by authorizing a use not permitted within the zoning regulations the board, in effect, amended those regulations.”⁴² To do so is not the function of the zoning board of appeals. Variances should not be used to accomplish what is, in effect, a substantial change in the uses permitted in a specific zone. The power to accomplish such a result is in the zoning commission.⁴³ Obviously this is even more true when the use is not permitted anywhere in the municipality. The establishment of and changes in general zoning regulations are a legislative function, and when the board uses its variance power to change those general rules, it encroaches on this legislative area and thereby acts in abuse of its discretion”.⁴⁴

Section 8-6 of the Connecticut General Statutes has been amended to provide that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed.

An amendment to the Zoning Regulations of the Town of Hamden which provided that “use variances shall not be granted in districts in which such uses are not otherwise allowed nor shall use variance be granted in any district within which said use is allowed by special permit authorized by the Planning & Zoning Commission” was held to be invalid and not authorized by the provisions of ' 8-6 of the General Statutes. In its decision the

Court noted that "the legislature, in modifying ' 8-6 in granting the power to *specify* the extent to which the power to modify by variance could be limited did not intend a wholesale destruction of that power. Rather, it contemplated the continued power in the Board of Appeals to vary uses because of unusual difficulties and unnecessary hardship subject, however, to regulatory control."⁴⁵

Variance to Permit Extension of Nonconforming Use

Only rarely may a zoning board of appeals grant a variance encompassing the extension of a nonconforming use. One instance is when the new nonconforming use will be less offensive to the comprehensive plan than the existing nonconforming use.⁴⁶ It is a general principle in zoning that nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit. In no case should they be allowed to increase.⁴⁷ The accepted policy of zoning is to prevent the extension of nonconforming uses.⁴⁸ The alteration or substantial remodeling of a building existing as a nonconforming use is logically inconsistent with the principle that "an essential purpose of zoning regulations is the stabilization of property uses,"⁴⁹ Fundamental structural improvements will serve only to perpetuate the nonconforming use.⁵⁰

Where the applicant or his predecessor creates a nonconformity, the Board lacks power to grant a variance.⁵¹

Condemnation Need for Area Variance

Section 48-24 of the General Statutes provides that "a condemning authority, if acquiring less than the total amount of a single unit of contiguous property, shall, if the remaining portion of such property does not conform to the area requirements of existing Zoning Regulations, obtain a zoning variance for such remaining portion of property from the local Zoning Board of Appeals before condemning any portion of such property. If such variance is not obtained prior to the taking by the condemning

authority, the owner or owners of such single unit of contiguous property shall be reimbursed for the total amount of such unit and the condemning authority shall take title in fee simple to the entire unit of contiguous property." In its interpretation of this particular section of the General Statutes, the Court in the case of *Smith v. The Zoning Board of Appeals*, 174 Conn. 323, held that the required showing of exceptional difficulty or unusual hardship was implicit in the proposed taking which rendered the property nonconforming and no requirement of further proof of hardship devolved upon the State. In its opinion the Court noted that its decision did not mean that whenever a condemning authority proceeded under ' 48-24 that it is automatically entitled to a variance. The Court pointed out that the Zoning Board of Appeals remains responsible for determining whether a proposed variance is in harmony with the general purpose of the Zoning Regulations.

Chapter Eleven

SPECIAL EXCEPTIONS

Section 8-2 of the Connecticut General Statutes permits any municipality as part of its zoning regulations to provide that certain classes or kinds of buildings, structures, or uses of land are permitted only after obtaining a special permit or special exception. The terms "special permit" and "special exception," as used in this section of the General Statutes, have the same meaning and can be used interchangeably.¹ If the zoning regulations do provide that certain classes or kinds of buildings, structures, or use of land, are permitted only after obtaining a special permit or special exception, the regulations must further provide whether the zoning commission, planning commission, combined planning and zoning commission, or the zoning board of appeals will be designated as the commission authorized to grant a special permit or a special exception.

"The special exception requirement enables the zoning authority to control the establishment of troublesome uses on a lot-by-lot basis. By adopting, in advance, standards which admit the use only under certain circumstances which assure a minimum of injury to surrounding property, the need for the use can be filled while the hazards of the use are reduced. At the same time, if the regulations are efficiently administered, the potential user can be fairly treated. The special permit technique also affords an opportunity for the imposition of conditions designed to protect adjacent or nearby landowners from the full impact of the permitted use. Such conditions can be custom-made to fit the use in effect, and can be confined by standards which prescribe conditions which might cripple the use."²

Distinction Between Special Permit and Variance

At the outset of any discussion pertaining to special permits or special exceptions, it is important to note that there is a difference

between a special exception and a variance. A municipality need not make any provision in its zoning regulations for the granting of special exceptions. If the zoning commission does decide to incorporate a provision for the granting of special exceptions into the zoning regulations, it may designate itself as the authority to decide upon applications pertaining to special exceptions, or it may designate the planning commission or the zoning board of appeals to hear such applications. In making provision for special exceptions in the regulations, the zoning commission must establish the standards and the conditions under which such special exceptions will be permitted, and these standards must be set forth in the regulations themselves.

The grant or denial of a variance is a power which ' 8-6 of the Connecticut General Statutes reserves solely for the zoning board of appeals. "A variance is authority extended to the owner to use his property in a manner forbidden by the zoning enactment, while an exception allows him to put his property to a use which the enactment expressly permits. The right to attach reasonable conditions to the grant of a variance is not dependent upon express authorization from the lawmaking body. Were this so, the Board, for lack of such right, might be forced, at times, to deny a variance and thus to perpetuate an owner's plight crying for relief. But with regards to the authorization of a special exception, a different situation prevails. As stated previously, the conditions permitting an exception must be found in the regulations themselves, and these conditions, if any, may not be altered."³

Standards

In order for regulations granting power to the zoning board of appeals to make exceptions to the zoning law to be valid, it is necessary that the regulation declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the protection of the public interest and with such degree of certainty as the nature of the case permits.⁴

A special permit allows a property owner to use his property in a manner expressly permitted by the local zoning regulations. The proposed use, however, must satisfy standards set forth in the zoning regulations themselves as well as the "conditions necessary to protect the public health, safety, convenience and property values." Gen. Stat. § 8-2. Acting in this administrative capacity, the board's function is to determine whether the applicant's proposed use is expressly permitted under the regulations, and whether the standards set forth in the regulations and the statute are satisfied.⁵

A zoning regulation which grants to the board of appeals the power to grant special exceptions to the regulations and outlines the procedure and norm or standard to be followed, and requires that all determinations be in accordance with the public interest and the comprehensive plan set forth in the regulations and detailing facts which the Board is required to find, sets out a sufficient guide for the board to act upon and will not be held invalid as an improper delegation of legislative authority.⁶

In the case of the *West Hartford Methodist Church v. Zoning Board of Appeals*, 143 Conn. 263, the Court held that the board did not act arbitrarily, illegally or so unreasonably as to have abused its discretion in denying the plaintiff's petition for a special exception. In sustaining the action of the board, the Court stated that "the West Hartford zoning regulations empower the zoning board of appeals to authorize a special exception to permit the location of a church in a residence A zone if, in the judgment of the board, the public convenience and welfare will be substantially served and the appropriate use of neighboring property will not be substantially or permanently injured. Although the new church planned by the plaintiff, including a rear parking lot for a hundred and fifty cars, would serve the public convenience and welfare, its location in the middle of a highly developed residential area would substantially injure the use of the neighboring property by reason of the increase in traffic, the loss of privacy and other conditions."

The conditions contained in the West Hartford ordinance for granting of a special exception, i.e., (1) that the public convenience and welfare will be substantially served; and (2) the appropriate use of neighboring property not be substantially or permanently injured, are extremely broad. In most zoning regulations, it is common to find the conditions under which special exceptions may be granted by a board of appeals to be set forth with more exactness and considerably more detail.

The case of *Cameo Park Homes, Inc. v. Planning & Zoning Commission*, 150 Conn. 672, furnishes another example of the authority of a local commission in dealing with applications pending before it for special exceptions. In this particular case, the Stratford zoning regulations permitted garden apartment developments in RS-3 districts, zoned primarily for one family dwellings, if approved by the commission as special exceptions. Uses allowed as special exceptions were declared by the regulations to be so unusual in their effect on an area that, to secure compliance with the purpose of the regulations, it was necessary for the commission to consider each proposed use as a special case. The conditions permitting the use as a special exception were found in the zoning regulations themselves. Certain restrictions which all garden apartment developments were required to satisfy were stipulated in the regulations, but in addition, the commission was charged with the responsibility of approving a use as a special exception only "after making special application of these regulations in order to meet with their general intent, by stipulating such restrictions as appear reasonable and the minimum necessary to protect property values and the public health, safety and welfare." The garden apartment development planned by the applicant complied with the regulations governing such matters as number and character of dwelling units in each building and the percentage of land to be occupied by the buildings. The commission refused approval, however, because the proposed development would increase the density of population above the prescribed maximum for the zone, would affect the mode of living in the area by creating problems of safety for children, would tend

to decrease the value of surrounding homes, by increasing traffic and thus limiting privacy, and would be inconsistent with the comprehensive plan, which contemplated preservation of the land as a natural recreation and screen protection area. In holding that the commission did not act arbitrarily, illegally or in abuse of its discretion in refusing to approve the application for the reasons given, the court stated that "the commission's power to stipulate such restrictions as appears to it 'to be reasonable and the minimum necessary to protect property values in the district as a whole and the public health, safety and welfare' necessarily implies the power to withhold its approval of the proposed use in its entirety if the commission finds that the circumstances warrant that action." The court further held that the claim of the plaintiff that, "because the development satisfies the structure and planned use requirements for garden apartment development, the commission's function was limited to specifying such further restrictions as it might consider necessary" was without merit.

Imposition of Conditions

In the case of *Shulman v. Zoning Board of Appeals*, 154 Conn. 426, the defendant board granted a special exception to Twin Lakes, Inc. to permit the operation of a swim or tennis club on property which Twin Lakes, Inc. had contracted to purchase from the owner. In addition to numerous restrictive conditions, which Twin Lakes, Inc. was required to observe in the operation of a club, paragraph 12 of the zoning regulations provided that: "The zoning board of appeals may impose any other reasonable conditions with regard to the operation of a swim or tennis club including limitation on hours of operation and restriction of commercial facilities." In its appeal, the plaintiff claimed that the action of the zoning board of appeals was invalid because of the failure of the board to limit the club's hours of operation and also that the board lacked jurisdiction to grant the application because Twin Lakes, Inc. did not own or lease the property as required by the zoning regulations at the time it made its application.

In sustaining the action of the board of appeals, the court stated: "Where, as here, a special exception, rather than a variance, is involved, the board may impose conditions only to the extent allowed by the zoning regulations themselves.⁷ Without such a grant of power, the board, in allowing a special exception, would be unable to impose a condition even where one was obviously desirable. But the mere fact that the board was given such a power does not require an exercise of that power in every application coming before the board. Nor can the mere fact that this grant of power was placed among a series of mandatory standards change its plain meaning from a grant of power into a mandatory standard. . . . The board is authorized to impose reasonable conditions as to the operation of a swim or tennis club, and paragraph 12 merely mentions limitations of hours and restriction of commercial facilities as two conditions which are included in those which the board is authorized to impose. Where, as here, there is a series of mandatory requirements, followed by a grant of general power to impose additional restrictions, expressed in permissive terms, there is . . . a clear implication of a discretionary jurisdiction conferred, to be assumed or declined as to the authority acting might deem just or advisable." With respect to the plaintiff's claim that the board lacked jurisdiction to grant the application of Twin Lakes, Inc. because Twin Lakes, Inc. did not own or lease the property at the time it made its application, the court stated that the general rule, which applies in the absence of a specific provision to the contrary, is that one who has contracted to purchase property has standing to apply for a special exception or a variance governing its use.⁸

Statement of Uses

The zoning regulations must state specifically what uses are permitted as special exceptions. The power to determine what uses are to be permitted as special exceptions may not be delegated by the zoning commission to the zoning board of appeals. In the case of *W.A.T.R., Inc. v. The Zoning Board of Appeals of the Town of Bethany*, 158 Conn. 196, the defendant board denied the

application of W.A.T.R., Inc. for a special exception to erect a television transmission tower in a residential zone. The application was made pursuant to a section of the Bethany Zoning Regulations which purported to empower the zoning board of appeals to determine what uses not specifically permitted in a residence zone and not specifically prohibited in all zones would be allowed. The section in issue did not limit the board in any way to a determination of whether a proposed use fell within one of the special exceptions expressly permitted by the regulations, nor did it define expressly any use which the board could permit as a special exception. In holding that the Commission had no authority to delegate this legislative power to the zoning board of appeals, the court held at page 200 of its decision: "A special exception allows a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations themselves. The zoning regulations, and not the zoning board of appeals, determine what uses may be allowed as special exceptions. The function of the zoning board of appeals in this connection is to determine whether or not a proposed use falls within one of the special exceptions expressly permitted by the regulations."

Special Permit Must Be a Permitted Use

In the case of *Weigel v. Planning Commission*, 160 Conn. 239, the applicant applied to the defendant commission for an amendment to the town plan of development to designate a tract of land 21.3 acres in area as suitable for designed development use, for the rezoning of said tract from Residence A to Design Development District, and for a special permit to allow Chesebrough-Pond, Inc. to establish a research and development laboratory and pilot plant on the tract. The commission granted the plaintiff's application for an amendment to the town plan of development, for the zone change which had been requested and for a special permit which would allow Chesebrough to manufacture products such as cosmetics, creams and perfumes, which were prohibited in every zone in the town of Westport. In

its decision the court concluded that since the uses authorized by the special permit were not permitted under the Westport zoning regulations the granting of the special permit was improper and hence invalid.

Compliance with Conditions

A zoning commission or board of appeals is not required to grant a special exception merely because the applicant for the special exception states that he will abide by, comply with and meet all of the conditions set forth in the zoning regulations. In the case of *Abramson v. Zoning Board of Appeals*, 143 Conn. 211, the plaintiff applied to the zoning board of appeals for a special exception to permit the removal of topsoil and gravel from his lot for the purpose of creating an artificial lake. The land was marginal and bordered on tidal swamps, a tidal brook and steep banks rising above it. The board found that, contrary to the conditions specified in the ordinance for the granting of such an exception, the excavation would cause a sharp declivity, pit or depression, stagnant water and drainage problems would be created, permanently depressed land values would result, and the excavation would not be in harmony with the general purpose and intent of the zoning regulations. The court held that despite the plaintiff's assurance that he would meet the conditions set forth in the regulations, the board did not act illegally, arbitrarily or in abuse of its discretion in denying the application. "For a special exception to have been justified, it must have appeared, and the zoning board of appeals must have concluded, that the manner in which the owner proposed to use his property would satisfy the conditions imposed by the regulations."⁹

Waiver of Conditions

The courts have stated repeatedly that a special exception allows a property owner to put his property to a use which the regulations expressly permit, and that the conditions permitting the use must be found in the zoning regulations themselves.¹⁰ Section

8-2 of the General Statutes specifically authorizes the zoning commission to designate the zoning board of appeals as the commission or board which will hear and decide upon applications subject to such standards as the zoning commission sets forth in the zoning regulations and to conditions necessary to protect the public health, safety, convenience and property values. The zoning board of appeals has no authority to alter any of the conditions prescribed in the zoning regulations in any manner. Its sole function is to determine whether or not the manner in which the applicant proposes to use his property will satisfy the conditions imposed by the regulations.¹¹

Imposition of Void Condition

A special permit permits an applicant to put his property to a use which is expressly permitted under the regulations so that the conditions under which a special exception is allowed must be found in the regulations and cannot be altered; and if a condition is imposed by a commission without being warranted by the regulations, it is void.¹² The imposition of a void condition does not necessarily render the whole decision illegal and inefficacious. If there are sufficient grounds to support the remaining action of the commission, which is not contested by the parties, a modification of the decision may be decreed.¹³

Reasons for Decisions

At the grant or denial of a special exception, the commission or board should state the reasons for its decision. This was clearly pointed out in the case of *Zieky v. Town Plan and Zoning Commission*, 151 Conn. 265, where the defendant commission denied, without giving reasons, the plaintiff's application for a special exception to allow the construction of garden apartments in an R-15 zone. In overturning the decision of the commission, the court noted that it "adhered to the proposition that, subject to certain underlying principles, the solution of zoning questions is to be left to the local authority, and that the courts cannot substitute

their judgment for the liberal discretion enjoyed by zoning authorities.¹⁴ That discretion is not, however, unlimited but must be exercised on reasonable grounds.”

Although the failure to state the reasons for its action does not automatically make the decision of the board void,¹⁵ the case of *Zieky v. Town Plan and Zoning Commission* furnishes an example of the result which can follow when it fails to do so. “In situations in which the zoning commission does state the reasons for its action, the question for the court to pass on is simply whether the reasons assigned are reasonably supported by the record and whether they are pertinent to the considerations which the commission is required to apply under the zoning regulations.¹⁶ Where, as in the present case, however, the commission assigns no reasons for its action, the court is left to surmise and conjecture as to what the reasons may be, unless the record discloses a reasonable basis for the action taken. There is then cast on the court the burden, made necessary by the commission’s omission, of searching the record to discover sufficient reason to support the decision under review. A search of the record before the defendant commission fails to show how the plaintiff can be said to have failed to comply with the zoning regulations The record before us is one in which the plaintiff appears to have proposed a plan consonant with the zoning regulations and with the overall plan for the town, no opposition to the plan was voiced, and the defendant commission, for reason apparent from the record or identified by it, denied the application.”

Hearings on Applications for Special Permits and Exceptions: Notice of Decision

Section 8-3(c) of the General Statutes provides that the zoning commission or combined planning and zoning commission of any municipality shall hold a public hearing on an application or request for a special permit or special exception, as provided in ' 8-2. Notice of the time and place of such hearing must be published in a newspaper having a substantial circulation in such

municipality at least twice, at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before the date of such hearing. At the hearing, any party may appear in person and may be represented by an agent or attorney. The commission must decide upon the application or request within sixty-five days after the completion of the hearing. Whenever a commission grants or denies a special permit or special exception, it must state upon its records the reason for its decision. Notice of the decision of the commission is required to be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to the person who requested or applied for the special permit or special exception, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. The permit or exception becomes effective upon the filing of a copy thereof (1) in the office of the town, city or borough clerk, as the case may be, but in the case of a district, in the offices of both the district clerk and the town clerk of the town in which the district is located and (2) in the land records of the town in which the affected premises are located, in accordance with the provisions of ' 8-3(d).

Variances, Special Permits and Special Exceptions to Be Recorded

Section 8-3d provides that no variance, special permit or special exception granted pursuant to Chapter 124 or Chapter 126 or any special act shall become effective until a copy thereof, certified by a zoning commission, planning commission, combined planning & zoning commission or zoning board of appeals, is recorded in the land records of the town in which the premises are located. The copy which is filed in the town clerk's office must contain a description of the premises involved and must specify the nature of the variance, special permit or special exception, including the zoning by-laws, ordinance or regulation which is varied in its application or to which a special exception is granted, stating the name of the owner of record. The town clerk is directed

to index the variance or special permit in the grantor's index under the name of the then record owner and the record owner is required to pay the recording fee.

Chapter Twelve

APPEALS TO THE SUPERIOR COURT

Any person or persons severally or jointly aggrieved by any decision of the board, or any person owning land which abuts or is within a radius of 100 ft. of any portion of the land involved in any decision of the board, or any officer, department, board or bureau of any municipality, charged with the enforcement of any order, requirement or decision of the board, may, within fifteen days of the date when notice of its decision is published in a newspaper pursuant to the provisions of ' 8-7, take an appeal to the Superior Court of the county or judicial district in which such municipality is located, which appeal must be made returnable to the court in the same manner as that prescribed for civil actions brought to the court. Notice of the appeal must be given by serving two true and attested copies upon the Clerk of the municipality. The Clerk will then leave one copy with, or at the usual place of abode of, the Chairman or Clerk of the Board. The appeal is required to state the reasons on which it has been predicated and does not stay proceedings on the decision appealed from, but the court to which the appeal is returnable may, on application, or notice to the board and cause shown, grant a restraining order. The authority issuing a citation in such an appeal is required to take from the appellant, unless such appellant is an official of the municipality, a bond or recognizance to the board, with surety, to prosecute such appeal to effect and comply with the orders and decrees of the Court.¹

Abutting Owners

The provision of the General Statutes, ' 8-8, which affords abutting owners the right of appeal from a zoning board is no more than the legislative recognition of an additional method of establishing standing to bring an appeal. An abutter has no greater interest than that of any other person found by the Court to be aggrieved.² Even though the provisions of ' 8-8 give abutters the

right to appeal decisions of zoning boards, nothing in the statutes supports the claim that the legislature thus granted abutters the right to notice of an appeal by an unsuccessful applicant.³

Where a landowner brought suit against the zoning board of appeals, seeking a review of the board's denial of a special permit which would allow the landowner to groom dogs and teach grooming as a home occupation, an abutting landowner who claimed that his property would be substantially reduced in value and that the residential character of the area would change if the board's denial of the permit were reversed, was held by the Court to be entitled to intervene as a party defendant.⁴

Indispensable Party

An applicant who received a favorable decision from the zoning board of appeals is a necessary, indeed indispensable, party to an appeal by persons aggrieved by the decision because were the appeal to be sustained, the result would be the invalidation and deprivation of rights granted to the applicant by the zoning board.⁵

Aggrievement

One may not attack the validity of a decision of a zoning board of appeals unless he is specifically and adversely affected thereby.⁶ The party appealing from a decision of a commission or board of appeals to the superior court has the burden of proving that he is an aggrieved person within the meaning of ' 8-8 of the General Statutes.⁷ If the party taking the appeal fails to prove that he is an aggrieved person, his appeal must fail.⁸ Whether an appellant is an aggrieved person is a question of fact for the trial court to determine.⁹ To be an aggrieved person, the appellant must establish a specific, personal and legal interest in the subject matter of the decision as distinguished from a general interest such as the concern of all members of the community.¹⁰ Mere generalizations and fears do not prove that an appellant is an aggrieved person.¹¹ To be entitled to an appeal from a decision of the planning and

zoning authorities, appellants must allege and prove that they are aggrieved parties. They are required to establish that they are aggrieved by showing they have a specific, personal, and legal interest in the subject matter of the decision as distinguished from a general interest such as is the concern of all members of the community and that they are specifically and injuriously affected in their property or other legal rights. Upon appeal, appellants must establish their aggrievement, and the court must decide whether they have sustained the burden of proving that fact.¹²

There is a public interest in many appeals which should be represented. In such situations, the board or officer having responsibility for making the decision appealed from is entrusted with the duty of protecting the public interest.¹³ This would include the right of a zoning enforcement officer to appeal a decision of a zoning board of appeals granting a request for a variance¹⁴ as well as the right of a zoning board of appeals to appeal the adoption of a zoning regulation which would restrict its ability to issue variances.¹⁵

It is clear that our Supreme Court has treated the concept of aggrievement to appeal a decision issued by a zoning board of appeals by the same standards as aggrievement to appeal other administrative decisions. It is also clear that those standards require that the Appellant must sustain his interest in the property involved throughout the course of his appeal.¹⁶ It is not enough to maintain a mortgage interest in the subject property where the owner sold the property during the appeal period.¹⁷

Intervention

Section 22a-19(a) of the General Statutes permits any person or legal entity the right to intervene in a land use proceeding as of right once a verified pleading is filed. This verified pleading must comply with the statutory requirements. At the administrative level, it often takes the form of a letter to the land use agency stating the intervenor's name and address and the reason for the

intervention. These reasons for intervening take the form of allegations. Whether or not these allegations prove to be true is immaterial and does not affect the intervenor's right to intervene in the proceedings.

One who has filed a verified pleading under 22a-19(a) becomes a party to the administrative proceeding and has statutory standing to appeal for the limited purpose of raising environmental issues. Once installed as a party to an appeal to court, the intervenor's approval would be needed before the appeal could be withdrawn by agreement between the parties.¹⁸

Motion to Dismiss

Section 8-8(d) of the General Statutes provides that the Court, upon the motion of the person who applied for the Board's decision, shall make such person a party defendant in the appeal. Such defendant may, at any time, after the return date of such appeal, make a motion to dismiss the appeal. At the hearing on such motion to dismiss, each appellant shall have the burden of proving his standing to bring the appeal. The Court may, upon the record, grant or deny the motion. The Court's order on such motion shall be a final judgment for the purpose of the appeal as to each such defendant. No appeal may be taken from any such order except within seven days after entry of such order.

Alcoholic Beverages

In cases where a variance has been granted permitting the sale of alcoholic beverages, the Court has held that the status of appellants as taxpayers in the community entitled them to prosecute an appeal.¹⁹ The essence of the holdings in those cases involving the sale of alcoholic beverages "is that to be an aggrieved person within the meaning of the statute one must show a pecuniary interest injuriously affected by the action of the zoning board of appeals and that such a showing may be sufficiently made, in a case where liquor traffic is involved, by proof that one

is a taxpayer in the town, in view of the pecuniary effect upon every taxpayer resulting from the incidence of such traffic. Such a distinction recognizes, again, that in liquor traffic, there is a possible source of danger to the public which is not inherent in other businesses and that, therefore, such traffic warrants distinctive and particular treatment."²⁰

Authorization to Appeal

In those regulations which specifically provide that the zoning regulations are to be enforced by the Building Inspector, he is authorized to take an appeal from a decision of the zoning board of appeals.²¹ The board of appeals, of course, may be made a defendant in an appeal from a decision it has made and if its decision is overruled, may itself petition the Supreme Court for certification. Also, the municipality concerned may participate in an appeal. There is no sanction for an appeal by a zoning commission where a ruling or order for the zoning commission is not an issue.²² However, if the zoning commission has designated itself as the authority to enforce the zoning regulations, it may appeal a decision of the zoning board of appeals.²³

Filing the Record

When an appeal is taken, the zoning board of appeals is required to return to the Court either the original papers acted upon by it, constituting the record of the case appealed from, or certified copies thereof. Under this requirement, the board must return forthwith either the original or a certified copy of the petition or application on which it has acted, the minutes of the proceedings before it and of the executive action taken by it, a transcript of the proceedings, all exhibits considered by it, and a copy of the relevant and material zoning regulations.²⁴

Competent Stenographer

The zoning board of appeals is required by the provisions of ' 8-7(a) of the General Statutes, to call in a competent stenographer to take the evidence or must cause the evidence to be recorded by a sound recording device in each hearing before it in which the right of appeal lies to the Superior Court. This requirement would also apply to any meeting wherein a discussion is held or a decision made on application where a hearing was held. The failure of the zoning board of appeals to have a stenographer take the evidence, or to cause the evidence to be recorded by a sound recording device, does not make the action of the Board void.²⁵ However, the Court is required by the provisions of ' 8-8 of the General Statutes, to allow any party on appeal to introduce evidence of what transpired before the board.

The Court is also required by the provisions of ' 8-8 of the General Statutes to permit the offer of additional evidence where it appears to the Court that additional testimony is necessary for the equitable disposition of the appeal.²⁶ Where no evidence is introduced before the Trial Court, pursuant to the provisions of ' 8-8 of the General Statutes, the Appellate Court must determine whether or not the Trial Court acted illegally, arbitrarily or in abuse of the discretion vested in it in reaching its decision based upon the record returned to the Trial Court by the Board. Discovery material is not a part of the record and should not be considered by the Trial Court in reviewing the decision of the Board.²⁷

Function of the Court

The Court, upon such appeal, after a hearing thereon, may reverse or affirm, wholly or partly, or may modify or revise the decision appealed from.²⁸ The function of the Court on an appeal from a decision of the board is limited to a determination of whether the board has acted arbitrarily or illegally, or so

unreasonably as to have abused its discretion. The power of the Court to modify or revise does not include the power to substitute its own discretion for that of the board. On appeal, the Court cannot conduct a new trial and substitute its findings and conclusions for the decision of the board.²⁹ However, the Court may search the record and find its own reasons where the board has failed to state the reasons for its decision or the reasons stated are inadequate.³⁰

Decisions of local Boards will not be disturbed so long as honest judgment has been reasonably and fairly exercised after a full hearing. Upon appeal, the trial court reviews the record before the Board to determine whether it has acted fairly or with proper motives or upon valid reasons. Since the credibility of witnesses and the determination of factual issues are matters within the province of the administrative agency, the Court must determine the correctness of the conclusions from the record on which they are based. That record includes knowledge acquired by Board members through personal observation of the site. Where a zoning authority has stated the reasons for its action, a reviewing Court may only determine if the reasons given are supported by the record and are pertinent to the decision. The decision of a zoning authority will only be disturbed if it is shown that it was arbitrary, illegal or in abuse of its discretion.³¹ Where it appears from the record that the action of a zoning authority rested on more than one ground, the authority's action must be sustained so long as the record supports at least one of the grounds.³² If the board has given more than one reason for its decision and the appealing party does not challenge all of those reasons, then she becomes bound by the unchallenged reasons and the court must therefore uphold the decision of the board.³³

In a zoning appeal the Court is required to take the law as it exists at the time of the review of the zoning decision complained of. The Supreme Court in *Edward Balf Co. v. East Granby*, 152 Conn. 319, 323, stated that "since Zoning Regulations are presumed to be for the welfare of the entire community, the mere

institution of a legal proceeding to determine the party's rights should not be allowed to freeze those rights and possibly upset the development of a community according to its comprehensive plan." The dispute should not be settled on the basis of Zoning Regulations which no longer exist. This lead was followed in the case of *Burgarella v. Planning & Zoning Commission*, 27 Conn. Sup. 400. In that case it was held that the appeal, based as it was on the pre-existing Zoning Regulations, presented a moot question and should be dismissed because the relief sought would be useless and unavailing by reason of the subsequent change in the zoning ordinance.³⁴

Generally, when a Court finds that action of an administrative agency is illegal, it should go no further than to sustain the appeal.³⁵ For the Court to go further and direct what action should be taken by the zoning authority would be an impermissible judicial usurpation of the administrative function of the authority. When it appears, however, that the zoning authority could reasonably reach only one conclusion, the Court may direct the authority to do that which the conclusion requires.³⁶ In the case of *Chevron Oil Co. v. Zoning Board of Appeals*, 170 Conn. 146, 153, the Court held that since the Trial Court found that the application of the setback regulation to the subject property would be tantamount to confiscation, it necessarily follows that the only reasonable action for the board to have taken would have been to grant the variance. Under those circumstances, the Court properly directed that the variance be granted. Where the person taking the appeal has failed to create an adequate record before the board, the court will not address the merits of the appeal. Nor will the court remand the matter so that any shortcomings in the administrative record can be completed as it was the duty of the appellant to correct these deficiencies at the time of the original administrative hearing.³⁷

On appeals to the Superior Court from an administrative agency, the writ is properly designated as a "citation" though it serves the same function as a writ of summons.³⁸

So far as a right of appeal is concerned, there is no distinction between the establishment of a zoning ordinance and the amendment of a zoning ordinance.³⁹

In 1967, General Statutes ' 52-163 was amended to permit Courts to take judicial notice of the ordinances of any town, city or borough. Zoning regulations are municipal ordinances and the Courts are permitted to take judicial notice thereof. The holding of the Court in the case of *Martin v. Board of Zoning Appeals*, 145 Conn. 735 has been superseded by virtue of the enactment of ' 52-163 of the General Statutes.⁴⁰

Certification

There is no right to appeal from a decision of the Superior Court except to the Appellate Court by certification for review, upon the vote of two judges of the Appellate Court so to certify and under such other rules as the Judges of the Appellate Court establish.⁴¹

Withdrawal of Appeal

No appeal taken pursuant to the provisions of ' 8-8 of the General Statutes may be withdrawn and no settlement between the parties to any such appeal is effective unless and until a hearing has been held before the Superior Court and the Court has approved such withdrawal or settlement.⁴²

Burden of Proof

The burden of proof is on the plaintiff to prove that the board or commission acted illegally, or so arbitrarily and unreasonably as to invalidate its action.⁴³

Relief

An appeal of a zoning board of appeal's decision pursuant to General Statute 8-8 provides that a court can provide the following relief. It can "reverse or affirm wholly or partly or may modify or revise the decision appealed from." No other relief is available, such as injunctive relief or awarding money damages.⁴⁴ A separate action for inverse condemnation can be taken while the appeal from the board's decision is pending.⁴⁵

Chapter Thirteen

POLICE POWER AND PRIVATE PROPERTY

"It is well established that the enactment of zoning regulations is the exercise of police power, and so far as they reasonably promote public health, welfare and safety, they are constitutional, even though their effect is to limit the exercise by private persons of some of their property rights.¹ Regulations may result to some extent, practically in the taking of property, or restricting its uses, and yet not be deemed confiscatory or unreasonable. Courts will not substitute their judgment for the legislative judgment when these considerations are fairly debatable. They will regard their validity, their necessity and their wisdom from the standpoint of existing conditions and present times. And in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. Courts will not hold laws, ordinances or regulations adopted under sanction of law to be unconstitutional unless they are clearly unreasonable, destructive or confiscatory. They cannot be unmindful at all times that they are dealing with one of the most essential powers of government, one that is the least limitable.² Where the free exercise of one's rights of property is detrimental to the public interest, the state has the right to regulate reasonably such exercise of control under the police power. And that, of course, means without compensation.³ Incidental damage to property resulting from governmental activities, or laws passed in the promotion of the public welfare, is not considered a taking of the property for which compensation must be made.⁴

"The police power is a necessary prerogative and attribute of government. All property is held subject to the police power.⁵ The police power of a state embraces regulations designed to promote the public health, the public morals or the public safety, and also

those designed to promote the public convenience or the general prosperity. That does not mean that this great power of government is without limitation. State and federal constitutions are its certain limitations, and state and federal statute may be its limitation. Municipal building regulations may be justified as promotive of the public safety or the public health.⁶ A municipality may impose reasonable restraint upon property under its exercise of the police power. Such a municipal regulation must be reasonable and must have a rational relation to the health, safety, welfare and prosperity of the community.⁷ Zoning regulations constitute a valid exercise of the police power only when they have a rational relationship to the public health, safety, welfare and prosperity of the community and are not such an unreasonable exercise of the police power as to become arbitrary, destructive or confiscatory.⁸ Whether a zoning ordinance meets this test must be determined in light of existing conditions, in order that the purpose for which the police power was invoked may be promoted."⁹

Reasonable regulation of the location of churches and schools for religious education does not violate the constitutional guarantee of freedom of religion. This was the holding of the court in *St. John's Roman Catholic Church Corporation v. Darien*,¹⁰ wherein the court held that the church was not entitled to an injunction against the enforcement of the Darien zoning regulations governing the location of parochial schools. In its decision, the court stated that "all property is held subject to the police power of the state¹¹ and its use may be regulated in the interest of the public health, safety or welfare."¹² The establishment of a private school in a residence district necessarily affects traffic control, parking, noise and fire protection, all of which are proper factors to consider in exercising the police power. The permit regulation itself, however, must not be arbitrary or unreasonable. Legislation cannot arbitrarily divide a class into two parts and constitute a different rule or law governing each of the parts of the severed class. The basis for a reasonable classification must show a difference to justify the division. A proper classification must

embrace all who naturally belong to the class, all who possess a common disability, attribute or qualification and there must be some natural and substantial difference germane to the subject and purposes of the legislation between those within the class included and those whom it leaves untouched.¹³ Neither Article First, ' 1 of the Connecticut Constitution nor the Fourteenth Amendment to the Federal Constitution has ever been held to prevent legislative bodies from dealing differently with different classes of persons, provided there is some natural and substantial difference germane to the subject and purposes of the legislation between those within the class included and those whom it leaves untouched." In this particular case, the requirement of the Darien zoning regulations that private and parochial schools obtain a special permit before locating in a residence district was proper because they presented critical traffic and parking problems as well as problems of noise and public safety attendant on the concentration of large crowds of people. Public schools, being creatures of statute, must have the approval of the planning commission or the legislative body of the municipality in the event the planning commission disapproves.¹⁴ They must also have the approval of the town board of education and the town building committee and plans must be filed with the State Board of Education before construction is begun.¹⁵ All these requirements tend to assure that those objectives which are the fundamental purpose of a zoning ordinance will be safeguarded. None of these, however, apply to parochial or private schools and the Darien zoning regulations with regard to the necessity of obtaining a special permit in this particular instance was an attempt to do no more than to offer assurance of a measure of supervision by a responsible public authority over conditions which affect the public health, safety and general welfare.

Chapter Fourteen

GOVERNMENTAL USES OF LAND

On occasion, areas of conflict arise between zoning regulations enacted by a local zoning commission and the uses to be made of a specific piece of property by either the municipal, state or federal government. Questions arise as to whether or not a municipality is subject to its own zoning regulations, whether or not the State of Connecticut is subject to the zoning regulations of the town and whether or not proposed or actual activities of the United States Government are subject to the zoning regulations of the town.

The question of whether or not a municipality is subject to its own zoning regulations was resolved in Connecticut in 1963 with the passage of Public Act 133 by the General Assembly. That public act, now a part of ' 8-2 of the General Statutes, reads as follows:

"Any city, town or borough which adopts the provisions of this Chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted, municipal property shall be subject to such regulations."

In Connecticut, therefore, a municipality is subject to its own zoning regulations in the use of municipal property for public purposes such as the establishment of a firehouse or a public works garage unless the legislative body of the municipality affirmatively votes not to be subject to its own zoning regulations.

It should be remembered, however, that even if the legislative body of a municipality does vote to exempt municipally-owned property from the zoning regulations of the town, the municipality is still subject to the provisions of ' 8-24 of the General Statutes,

which provide in part as follows: "No municipal agency or legislative body shall locate, accept, abandon, widen, narrow or extend any street, bridge, parkway or other public way, locate, relocate, acquire land for, or abandon, sell or lease, any airport, park, playground, school or other municipally-owned property or public building, extend or locate any public housing project or redevelop, recondition or improve any specific area, or take action on any proposal involving the extent and location of public utilities and terminals, whether publicly or privately-owned, for water, sewerage, light, power, transit and other purposes, until the proposal to take such action has been referred to the planning commission for a report. The failure of the commission to report within 30 days after the date of official submission to it shall be taken as approval of the proposal. In the case of the disapproval of the proposal by the commission, the reasons therefore shall be recorded and transmitted to the legislative body of the municipality. A proposal disapproved by the commission shall be adopted by the municipality only after (a) a majority vote of those present and voting in an annual or special town meeting, or (b) by a two-thirds vote of the representative town meeting or city council or the warden and burgesses, as the case may be.

Neither the State of Connecticut nor the United States Government is subject to the zoning regulations of a municipality, unless they have specifically consented to be so regulated. This applies to all state and federally-owned land within the municipality, regardless of the purpose for which that land is used.

In the case of *Dupuis v. Submarine Base Credit Union, Inc.*, 170 Conn. 344, the Supreme Court held that a lower court was in error in dismissing a suit which sought to prevent the defendant from occupying a building which it built on land leased from the Federal Government without first obtaining a building permit or a certificate of occupancy. In sustaining the action of the plaintiff, who was the building inspector and the zoning enforcement officer of the Town of Groton, the Court stated at p. 347 of its decision, "The constitution declares that Congress shall have the power to exercise exclusive jurisdiction over any lands acquired by the

United States for the erection of Forts, Magazines, Dock Yards, and other needful buildings. Two prerequisites to the vesting of exclusive jurisdiction over such lands must be satisfied: The state in which the lands are located must consent, and the United States must accept such jurisdiction. *Silas Mason Co. v. Tax Commissioner*, 302 U.S. 186 207. Connecticut had consented to the acquisition of land by the United States for the above named purposes, and has ceded exclusive jurisdiction over such lands to the federal government. General Statutes, §48-1. But for all lands acquired by the United States since February 1, 1940, Congress has required that a federal official file with the governor of the state in which the lands are located a notice of acceptance of jurisdiction, either exclusive or partial, over the lands, and, in the absences of such a notice, it shall be conclusively presumed that no such jurisdiction has been accepted. 40 U.S.C. § 255; *Adams v. U.S.*, 319 U.S. 312. Although the parties stipulated that the land leased by the credit union had been acquired by the United States at sometime subsequent to February 1, 1940, there was no evidence offered, nor does a search of the record reveal any, tending to prove that the statutory procedure for the acceptance of jurisdiction has been followed. Therefore, the trial court could not have properly concluded that exclusive jurisdiction over the leased land has been vested in United States. In the absence of an acceptance of either partial or exclusive jurisdiction, the United States' possession of lands is that of an ordinary proprietor, *Paul v. U.S.*, 371 U.S. 245, 264. It is not unusual for the United States to own within a state lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the state. The lands remain a part or territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands to interfere with its right of disposal. *Surplus Trading Co. v. Cook*, 281 U.S. 647, 650. The Groton Zoning Ordinances and building code constitute a valid exercise of the state's police power. *Euclid v. Ambler Realty Co.*, 272 U.S. 365; *State v. Hillman*, 110 Conn. 92, 100; and as such they are applicable to federal lands to the extent that they are not inconsistent with the

9

federal purposes in acquiring the lands and are not contrary to federal statutes. *James Stewart & Co. v. Fadrakula*, 309 U.S. 94” The courts in Massachusetts have held that once the state sells a parcel of land to a private owner, that land automatically come under the zoning regulations of the municipality in which it is located and assumes the zoning characteristics of the surrounding property.¹ Land which the state government or the federal government leases from a private landowner is subject to the zoning regulations of the municipality. This was the holding of the court in *Baltimore v. Linthicum*, 170 Md. 245, where the court held that in the absence of overriding legislation to the contrary, the immunity which a governmental agency may have from use prohibitions contained in a zoning ordinance does not extend to a private owner, even though he leases the land to the government agency for such use.

Chapter Fifteen

ENFORCEMENT

Section 8-12 of the General Statutes provides that "if any building or structure has been erected, constructed, altered, converted or maintained, or any building, structure or land has been used, in violation of any provision of Chapter 124 of the General Statutes or of any by-law, ordinance, rule or regulation made under authority conferred hereby, any official having jurisdiction, in addition to other remedies, may institute an action or proceeding to prevent such unlawful erection, construction, alteration, conversion, maintenance or use or to restrain, correct or abate such violation or to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. Such regulations shall be enforced by the officer or official board or authority designated therein, who shall be authorized to cause any building, structure, place or premises to be inspected and examined, and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under authority of the provisions of Chapter 124 or, when the violation involves grading of land, or the removal of earth, to issue, in writing, a cease and desist order to be effective immediately.

"The owner or agent of any building or premises where a violation of any provision of the zoning regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where such violation has been committed or exists, or the owner, agent, lessee or tenant of any part of the building or premises in which such violation has been committed or exists, or the agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists, shall be fined not less than ten nor more than one hundred dollars for each day that such violation continues; but, if the offense is willful, the person convicted thereof shall be fined not

less than one hundred dollars nor more than two hundred and fifty dollars for each day that such violation continues, or imprisoned not more than ten days for each day such violation continues or both, and the Superior Court shall have jurisdiction of all such offenses, subject to appeal as in other cases.

"Any person who, having been served with an order to discontinue any such violation, fails to comply with such order within ten days after such service, or having been served with a cease and desist order with respect to a violation involving grading of land or removal of earth, fails to comply with such order immediately, or continues to violate any provision of the regulations made under authority of the provisions of this Chapter specified in such order shall be subject to a civil penalty of five hundred dollars payable to the Treasurer of the municipality. In any criminal prosecution under this Section, the defendant may plead in abatement that such criminal prosecution is based on a zoning ordinance or regulation which is the subject of a civil action wherein one of the issues is the interpretation of such ordinance or regulations, and that the issues in the civil action are such that the prosecution would fail if the civil action results in an interpretation different from that claimed by the state in the criminal prosecution. The court before which such prosecution is pending may order such prosecution abated if it finds that the allegations of the plea are true."

Section 8-3(e) of the General Statutes states that the Zoning Commission shall provide for the manner in which the zoning regulations shall be enforced. The Statute further directs that no building permit shall be issued for a building, use or structure subject to the zoning regulations of any municipality without certification in writing by the zoning enforcement officer that such building, use or structure is in conformity with the zoning regulations or is a valid non-conforming use under the zoning regulations.

Section 8-12 of the General Statutes states that the zoning regulations shall be enforced by the officer or official board or the authority designated in the regulations. In some municipalities, the regulations designate the building inspector as the zoning enforcement officer; in other municipalities, the zoning regulations state that the regulations shall be enforced by an individual appointed by the Commission itself; in other municipalities, the regulations designate the Zoning Commission itself as the authority to enforce the regulations. Any attempt by the municipality to designate the person, board or agency which is to enforce the zoning regulations is void and of no effect. This is true whether the attempt is made by adoption of an ordinance, vote of the legislative body or enactment of a home rule charter. The zoning commission alone has the authority to designate the manner in which the zoning regulations will be enforced and the person, board or agency which will do the enforcing.¹

The power of the board or commission to institute legal proceedings to safeguard its mandates includes the right to engage counsel, particularly where officers of the town, who have nothing to do with the board's enforcement of its mandates, decide that the interests of the town do not require the institution of proceedings in a court to enforce the official actions of the board. Were the rule otherwise, the function of the zoning board would become a nullity; the enforcement of its orders would be made to depend upon considerations that could well be extraneous in character, depending upon the state of mind of other town officials and their personal inclinations respecting individual matters which had come before the board for official action and upon which official action has been taken. Hence, in the case of *Chalker v. Town of Old Saybrook*, 12 Conn. Sup. 192, the court held that a member of a town zoning board of appeals was required to be indemnified for expenses incurred by him in connection with an unsuccessful proceeding instituted by the board in the Superior Court, against the wishes of town officials, for the enforcement of an order of the board, where the board acted in good faith and in the discharge of its official duties.

Estoppel

Delay by a zoning commission in commencing civil process to enforce the zoning regulations is not held to constitute a waiver of the duty which it owes to the public to compel enforcement of the zoning regulations; and the commission is not estopped by laches from enforcing its zoning law.² The law in Connecticut was clearly enunciated by the court in the case of *Dupais v. Submarine Base Credit Union, Inc.*, 170 Conn. 344, where the Court stated at p. 352 of its decision:

"It has consistently been the law of this state that a town cannot be estopped by the unauthorized acts of its agents from enforcing its zoning laws.³ Nor may the defense of laches be invoked against a zoning authority.⁴ This specific rule with respect to zoning authorities must be placed in context as one aspect of the larger rule, explained in *Pet Car Products, Inc. v. Burnett*, 150 Conn. 42, 53, that in general, estoppel may not be invoked against the government or a public agency functioning in its governmental capacity.⁵ The general rule is qualified, however, in that one may invoke the doctrine where his action has been induced by the conduct of municipal officers and where he would be subjected to a substantial loss if the municipality were permitted to negate the acts of its agents.⁶ There are two essential elements to an estoppel—the party must do or say something that is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief; and the other party, induced thereby, must actually change his position or do some acts to his injury which he otherwise would not have done.⁷ Moreover, it is the burden of the person claiming the estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge.⁸

"We have acknowledged, however, that there are situations in which the doctrine of equitable estoppel may be applicable to municipalities in the enforcement of zoning laws."⁹

In *Tallman v. East Haven*, 135 Conn. 593, 594, we noted that cases have undoubtedly arisen where relief has been granted (on the ground of estoppel) because the circumstances were unusual and the hardship great. In *Pet Car Products, Inc. v. Burnett, supra*, 53, citing *Cities Service Oil Co. v. City of Des Plaines, supra*, we stated that the general rule, pertaining to the invocation of the doctrine of estoppel against the government or a public agency functioning in its governmental capacity, is qualified when one would be subjected to a substantial loss if the municipality were permitted to negate the acts of its agents. The courts have consistently held that the general rule applicable to the invocation of the doctrine of estoppel against municipal corporations should be limited and invoked 1) only with great caution; 2) only when the resulting violation has been unjustifiably induced by an agent having authority in such matters; and 3) only when special circumstances make it highly inequitable or oppressive to enforce the zoning or building regulations.¹⁰

For purposes of a variance, equitable estoppel cannot be relied upon as a source of hardship sufficient to support a variance.¹¹

Injunction

The primary responsibility for enforcing the zoning regulations of a municipality rests with the zoning commission or its duly authorized agent. Occasionally, however, situations will arise when a private citizen will have the right to enforce the zoning regulations by seeking an injunction against a purported violation. The injunction sought may be either mandatory or prohibitory in form. It is mandatory in form where some positive act is requested to prevent a violation of the zoning regulations. It is prohibitory in form where a demand is made that certain activities be stopped which are allegedly in violation of the zoning regulations.

Injunctions have been granted to restrain the construction of a drive-in theater,¹² to restrain the use of certain premises as a trailer park,¹³ to restrain the use of certain premises in a residential zone for a lumber business,¹⁴ to prevent the use of certain premises in a residential zone from being used as a parking lot,¹⁵ and to prevent the use of certain premises in a residential zone from being used for a home industry, more specifically, a hairdressing establishment.¹⁶

While private citizens cannot ordinarily invoke the aid of the courts to punish a violator of the zoning ordinance by a criminal proceeding or action to recover a penalty, those persons specifically and materially damaged by a violation existing on, or intended to be made of, another's land, may maintain an action to restrain such violation, existing or threatened.¹⁷ In the case of *Adley v. Paier*, 148 Conn. 84, a private citizen was granted an injunction to prevent the use of property abutting his property located in a residential zone from being used as a parking lot for an art school. Similarly in the case of *Jeschor v. Guilford*, 143 Conn. 152, a group of private citizens, including the owners of land abutting that of the Town of Guilford, upon which the Town of Guilford established a town dump, were held to be entitled to injunctive relief where the town had not followed the mandates of the General Statutes in establishing the dump.

Building Permit

Before work is commenced on any structure or before work is commenced to substantially alter a structure, a building permit must be obtained. In many communities, it is the function of the building inspector, not only to determine that the proposed structure will comply with the building code, but further, that the proposed structure or alteration will comply with the zoning regulations. Many communities had building codes before the commencement of zoning and it seemed a logical extension of the duties of the building inspector, when he was making his determination as to whether or not a proposed structure would

comply with the building code, that he also make a determination as to whether or not the proposed structure would comply with the zoning regulations. It was for this reason that many zoning commissions designated the building inspector as the zoning enforcement officer in the zoning regulations. This system has worked fairly well in most instances. However, in many communities, the office of the building inspector is notoriously understaffed, and it is not always possible for the building inspector to spot areas where the proposed structure or alteration would conflict with the zoning regulations. This has become increasingly true as zoning regulations have become more sophisticated to meet the ever-growing demands of an expanding community. In order to remedy this particular situation, many zoning commissions have designated an individual as zoning enforcement officer who is not the building inspector. This is certainly no reflection on the office of the building inspector, but as building codes and zoning regulations have become more complex, it has become increasingly evident that one individual cannot effectively handle both jobs. Over a period of time, the zoning enforcement officer will develop a degree of expertise which will enable him to anticipate problems regarding the uses which a landowner wishes to make of his property and potential areas of conflict with the zoning regulations.¹⁸

Section 8-3(e) of the General Statutes directs that no building permit shall be issued for a building, use or structure subject to the zoning regulations of any municipality without certification in writing by the zoning enforcement officer that such building, use or structure is in conformity with the zoning regulations or is a valid nonconforming use under the zoning regulations.

Certificates of Occupancy

While building permits are effective initially in attempting to ensure that a proposed structure or alteration will not violate the zoning regulations, they do not guarantee that the developer or

landowner will build in accordance with the zoning regulations. Other than the threat of a revocation of the building permit, little control can be exercised once construction has started.

For this reason, it is common for zoning commissions to require that the developer or landowner secure a certificate of occupancy before the structure is actually occupied. In this way, the zoning enforcement officer can make a determination before occupancy concerning compliance with the zoning regulations. If the regulations have not been complied with, the certificate of occupancy is withheld until the violation is corrected. The combination of a building permit before construction and a certificate of occupancy before occupancy is generally recognized as the best method of ensuring compliance with the zoning regulations.¹⁹

Nonconforming Building

Section 8-13a of the General Statutes provides that when a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot, and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building is deemed a nonconforming building in relation to such boundaries.

CONCLUSION

It is the role of a zoning board of appeals to balance the rights of the individual property owner with the needs of the community for the orderly and appropriate use of land. It is our wish that this book has provided enough information and guidance to both board members and to those who appear before them so that this role can be fulfilled.

INDEX

Topic	Page
Abutting Owners	83
Aggrievement	84
Alcoholic Beverages	86
Alternates	13
Appeals to Board	15
Appeals to Court	83
Attendance at Hearing	26
Authorization to Appeal	87
Automatic Stay	18
Basis of Zoning Authority	7
Building Permit	105
Burden of Proof	91
Certificate of Occupancy	106
Composition of Board	13
Condemnation	69
Conditions	55
Confiscatory Regulations	65
Cross Examination	25
Decisions	40
Decision – Notice of	43
Disqualification	45
Effective Date of Decision	44
Enforcement	100
Estoppel	103
Financial Hardship	61
Function of the Court	89
Government Use of Land	96
Hardship	53
History of Zoning	1
Inadequate Notice	29

Topic	Page
Indispensable Party	84
Injunction	104
Jurisdiction of Board	14
Legality of Zoning	3
Mailing Notice	31
Motion to Dismiss	86
Nonconforming Use	69
Notice Content	34
Notice to Owner	38
Personal Knowledge	42
Police Power	93
Post Hearing Evidence	25
Practical Confiscation	65
Publication Time Limits	37
Published Notice	36
Predetermination	23
Public Hearing Purpose	22
Quorum	22
Reasons for Decision	79
Recessed Hearing	23
Reconsideration	42
Record	88
Recording	44
Referral	63
Rehearing	23
Relief	92
Reversed Decision	41
Self Created Hardship	56
Special Permit Defined	71
Special Permit Standards	72
Terms of Office	13
Time Limits to Take Appeal	83

ENDNOTES

Topic

Page

Unreasonable Conditions	56
Use Variance	64
Variances – Authority to Grant	52
Variance – Conditions	55
Variance Defined	55
Variance – Transfer	63
Void Conditions	79
Withdrawal of Appeal	19

ENDNOTES

- ¹ *New Directions in Connecticut Planning and Zoning*, Chapter 2.
- ² *Sullivan v. Town Council*, 143 Conn. 280, 282; *Long v. Zoning Commission*, 133 Conn. 248, 250.
- ³ *New Directions in Connecticut Planning Legislation*, Chapter 2.
- ¹ *Village of Euclid, Ohio v. Ambler Realty Company*, 272 U.S. 357.
- ² *Windsor v. Whitney*, 95 Conn. 357.
- ³ *McQuillian Municipal Corporations*, §25.05.
- ⁴ *Chicago B & O Ry. Co. v. Drainage Commissioners*, 200 U.S. 561, 592 (1905).
- ⁵ *Windsor v. Whitney*, 95 Conn. 357, 363 (1920).
- ⁶ *Strain v. Mims*, 123 Conn. 275, 280 (1937).
- ⁷ Maltbie, Legal Background of Zoning, Connecticut Bar Journal, Vol. 22, Page 2.
- ¹ *The Service Realty Corporation v. Planning & Zoning Board*, 141 Conn. 632.
- ² *The Lakeside Realty Company v. Town of Berlin*, 20 Conn. Sup. 188.
- ³ *Jennings v. Connecticut Light & Power Company*, 140 Conn. 650.
- ⁴ *Poneleit v. Dudas*, 141 Conn. 413; *Talmadge v. Zoning Board of Appeals*, 141 Conn. 639.
- ⁵ *Suffield Heights Corp. V. Town Planning Commission*, 144 Conn. 425; *Libby v. Zoning Board of Appeals*, 143 Conn. 46; *Goldreyer v. Zoning Board of Appeals*, 141 Conn. 641.
- ⁶ *The Lakeside Realty Company v. Town of Berlin*, 20 Conn. Sup. 188.
- ⁷ *Clark v. Town Counsel*, 145 Conn. 476.
- ⁸ *Florentine v. Darien*, 142 Conn. 415; *Gendron v. Borough of Naugatuck*, 21 Conn. Sup. 78.
- ⁹ *Jennings v. Connecticut Light and Power Company*, 140 Conn. 650; *Clark v. Town Council*, 145 Conn. 476.
- ¹⁰ *Gendron v. Borough of Naugatuck*, 21 Conn. Sup. 78.
- ¹¹ *Gendron v. Borough of Naugatuck*, 21 Conn. Sup. 78; *Miller v. Town Planning Commission*, 142 Conn. 265.
- ¹² *State of Connecticut v. Huntington*, 145 Conn. 394.
- ¹³ *Darien v. Webb*, 115 Conn. 581; *State of Connecticut v. Huntington*, 145 Conn. 394.
- ¹⁴ *Finch v. Montanari*, 143 Conn. 542.
- ¹⁵ *Couch v. Zoning Commission*, 141 Conn. 349.
- ¹⁶ *State of Connecticut v. Huntington*, 145 Conn. 394; *Couch v. Zoning Commission*, 141 Conn. 349; *Miller v. Town Planning Commission*, 142 Conn. 265; *Clark v. Town Council*, 145 Conn. 476.
- ¹⁷ *Summ v. Zoning Commission*, 150 Conn. 79; *Nowicki v. Planning and Zoning Board*, 148 Conn. 492.

-
- ¹⁸ *Woodford v. Town of Ridgefield*, 147 Conn. 30; *Corsino v. Grover*, 148 Conn. 299.
- ¹⁹ *Purtill v. Town Planning and Zoning Commission*, 146 Conn. 570.
- ²⁰ *Levinsky v. Zoning Commission*, 144 Conn. 117; *Clark v. Town Council*, 145 Conn. 476.
- ²¹ Section 8-24, General Statutes; § 8-3a, General Statutes; *Jesschor v. Town of Guilford*, 143 Conn. 152.
- ²² *Beach v. Planning and Zoning Commission*, 141 Conn. 79.
- ²³ Section 8-1, General Statutes.
- ²⁴ Section 8-5, General Statutes.
- ²⁵ *The Service Realty Corp. v. Planning & Zoning Board*, 141 Conn. 632; *Steiner, Inc. v. Town Planning and Zoning Commission*, 149 Conn. 74.
- ²⁶ *Florentine v. Town of Darien*, 142 Conn. 415.
- ²⁷ *Finch v. Zoning Board of Appeals*, 143 Conn. 542; *Goldreyer v. Zoning Board of Appeals*, 144 Conn. 641.
- ¹ Section 8-5 of the General Statutes.
- ² Section 8-11(a), General Statutes.
- ³ *Hebb v. Zoning Board of Appeals of the Town of West Haven*, 150 Conn. 539.
- ⁴ Section 8-5 of the General Statutes; see § 7-107 of the General Statutes.
- ⁵ Section 8-5 of the General Statutes.
- ⁶ Section 8-5(b) of the General Statutes.
- ¹ Section 8-3 of the General Statutes.
- ² *Porter v. East Hampton*, 18 Conn. App. 312, 313.
- ³ *Country Lands, Inc. v. Swinnerton*, 151 Conn. 27, 33.
- ⁴ Section 8-7 of the General Statutes.
- ⁵ *Loh v. Town Plan and Zoning Commission*, 161 Conn. 32, 41.
- ⁶ Section 8-7 of the General Statutes.
- ⁷ *Pascale v. Zoning Board of Appeals*, 150 Conn. 113.
- ⁸ *Bosley et al. v. ZBA*, 30 Conn. App. 797.
- ⁹ *Munroe v. ZBA*, 261 Conn. 263.
- ¹⁰ *Bankers Trust Company v. Zoning Board of Appeals*, 155 Conn. 624.
- ¹¹ Section 8-6a, General Statutes.
- ¹² *Minitier v. Zoning Board of Appeals*, 20 Conn. App. 302, 305-306.
- ¹³ Section 8-7 of the General Statutes.
- ¹⁴ *State of Connecticut v. Magnota*, 23 Conn. Sup. 124.
- ¹⁵ *A&M Towing v. Newington Zoning Board of Appeals*, 16 Conn. L. Rptr. 142.
- ¹ Section 8-7 of the General Statutes.
- ² Section 8-7d(a) of the General Statutes as amended by P.A. 03-177.
- ³ *Leo Fedus & Sons v. Zoning Board of Appeals*, 225 Conn. 432.
- ⁴ Section 8-7d(c) of the General Statutes.
- ⁵ Section 8-d(d) of the General Statutes.
- ⁶ *Lunt v. Zoning Board of Appeals*, 150 Conn. 532.
- ⁷ *Couch v. Zoning Commission*, 141 Conn. 349, 356.

-
- ⁸ *SIS Enterprises Inc. v. Zoning Board of Appeals*, 33 Conn. App. 281.
- ⁹ *Pecora v. Zoning Commission*, 145 Conn. 435.
- ¹⁰ *Daw v. Westport Zoning Board of Appeals*, 25 Conn. L. Rptr. 530.
- ¹¹ Section 8-7(a) of the General Statutes.
- ¹² *London v. Zoning Board of Appeals*, 150 Conn. 411, 417.
- ¹³ *Welch v. Zoning Board of Appeals*, 158 Conn. 208, 212, 215.
- ¹⁴ *Parish of St. Andrew's Church v. Zoning Board of Appeals*, 155 Conn. 350, 358; *Armstrong v. Zoning Board of Appeals*, 158 Conn. 158, 168.
- ¹⁵ *Loh v. Town Plan & Zoning Commission*, 161 Conn. 32, 41.
- ¹⁶ *Dana-Robin Corporation v. Common Council*, 166 Conn. 207, 216, 217; *Grillo v. Zoning Board of Appeals*, 4 Conn. App. 205, 206.
- ¹ Section 8-7, General Statutes.
- ² *Edward Balf Company v. East Granby*, 152 Conn. 319, 325.
- ³ *Koepke v. Zoning Board of Appeals*, 223 Conn. 171.
- ⁴ *Strain v. Mims*, 123 Conn. 275, 287.
- ⁵ *Couch v. Zoning Commission*, 141 Conn. 349, 356.
- ⁶ *Bowl-O-Rama, Inc. v. Zoning Board of Appeals*, 195 Conn. 276, 281.
- ⁷ *Koepke v. Zoning Board of Appeals*, 223 Conn. 171.
- ⁸ *Wright v. Zoning Board Appeals*, 174 Conn. 488.
- ⁹ *Kobyluck v. Montville Zoning Board of Appeals*, 29 Conn. L. Rptr. 47.
- ¹⁰ *Winslow v. Zoning Board*, 143 Conn. 381, 388.
- ¹¹ *Couch v. Zoning Commission*, 141 Conn. 349, 358; *Pecora v. Zoning Commission*, 145 Conn. 435, 444.
- ¹² *Nazarko v. Zoning Commission*, 50 Conn. App. 517.
- ¹³ *Gendron v. Borough of Naugatuck*, 21 Conn. Sup. '78.
- ¹⁴ Section 8-7(b), General Statutes.
- ¹ Section 8-7d(a) of the General Statutes.
- ² *Donohue v. Zoning Board of Appeals*, 155 Conn. 550, 554.
- ³ Section 8-7d of the General Statutes.
- ⁴ *Leo Fedus & Sons Construction v. Zoning Board of Appeals*, 225 Conn. 432, 446.
- ⁵ *McBrien v. Planning & Zoning*, 25 Conn. L. Rptr 404.
- ⁶ *Toffolon v. Zoning Board of Appeals*, 155 Conn. 558, 565.
- ⁷ Section 8-7 of the General Statutes.
- ⁸ *Connecticut Sand and Stone Corporation v. Zoning Board of Appeals*, 150 Conn. 439.
- ⁹ *Fiorilla v. Zoning Board of Appeals*, 144 Conn. 275; *Mynyk v. Zoning Board of Appeals*, 151 Conn. 34, 37; *Laurel Beach Association v. Zoning Board of Appeals*, 166 Conn. 385, 389.
- ¹⁰ *Wright v. Zoning Board of Appeals*, 174 Conn. 488.
- ¹¹ *Dubiel v. Zoning Board of Appeals*, 150 Conn. 75.
- ¹² *Sharp v. Zoning Board of Appeals*, 43 Conn. App. 512.

-
- ¹³ *Sharp v. Zoning Board of Appeals*, 26 Conn. App. 187; *St. Patrick's Church Corp. v. Daniels*, 113 Conn. 132.
- ¹⁴ *Dubiel v. Town of East Hartford*, 147 Conn. 517; *Oakwood v. Zoning Board of Appeals*, 20 Conn. App. 460.
- ¹⁵ Section 8-7 of the General Statutes.
- ¹⁶ *London v. Zoning Board of Appeals*, 150 Conn. 411.
- ¹⁷ *Ward v. Zoning Board of Appeals*, 153 Conn. 141.
- ¹⁸ Section 8-7 of the General Statutes.
- ¹⁹ *Hyatt v. Zoning Board of Appeals*, 163 Conn. 379, 387; *Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals*, 195 Conn. 276, 281.
- ²⁰ *Hubbard v. Planning Commission*, 151 Conn. 269, 271-72; *Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals*, 195 Conn. 276, 281.
- ²¹ *Jarvis Acres, Inc. v. Zoning Commission*, 163 Conn. 41, 47; *Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals*, 195 Conn. 276, 282.
- ¹ *Koslow v. Zoning Board of Appeals*, 19 Conn. Sup. 303.
- ² *Mills v. Town Planning and Zoning Commission*, 144 Conn. 493; 145 Conn. 237; *Dana-Robin Corporation v. Common Council*, 166 Conn. 207.
- ³ *Daly v. Town Planning & Zoning Commission*, 150 Conn. 495.
- ⁴ *Leury v. Zoning Board of Appeals*, 150 Conn. 136.
- ⁵ *Josephson v. Planning Board*, 151 Conn. 489.
- ⁶ *Kovalik v. Planning and Zoning Commission*, 155 Conn. 497.
- ⁷ *Anderson v. Zoning Commission*, 157 Conn. 285, 290.
- ¹ Section 8-6 of the General Statutes, *Green v. Zoning Board of Appeals*, 44 Conn. App. 500.
- ² *Farnsworth v. Town of Windsor*, 50 Conn. 484, 486.
- ³ *Miclon v. Zoning Board of Appeals*, 173 Conn. 420; *Smith v. Zoning Board of Appeals*, 174 Conn. 323, 326; *Whittaker v. Zoning Board of Appeals*, 179 Conn. 650, 655; *Pollard v. Zoning Board of Appeals*, 186 Conn. 32, 39.
- ⁴ *Pollard v. Zoning Board of Appeals*, 186 Conn. 32, 39, 40; *Kelly v. Zoning Board of Appeals*, 21 Conn. App. 594, 599.
- ⁵ *Bloom v. Zoning Board of Appeals*, 233 Conn. 198.
- ⁶ *Gregorio v. Board of Zoning Appeals*, 155 Conn. 422, 427; *Makar v. Zoning Board of Appeals*, 150 Conn. 391, 394.
- ⁷ *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 145; *Laurel Beach Association v. Zoning Board of Appeals*, 166 Conn., 385.
- ⁸ *Krejpcio v. Zoning Board of Appeals*, 152 Conn. 657, 662.
- ⁹ *Wnuk v. Zoning Board of Appeals*, 225 Conn. 691.
- ¹⁰ *Cymers v. Zoning Board of Appeals*, 151 Conn. 49.
- ¹¹ *Plumb v. Zoning Board of Appeals*, 141 Conn. 595, 601; *Gregorio v. Board of Zoning Appeals*, 155 Conn. 422, 428.
- ¹² *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 145.
- ¹³ *Plumb v. Zoning Board of Appeals*, 141 Conn. 595, 601; *Pike v. Zoning Board of Appeals*, 31 Conn. App. 270.

-
- ¹⁴ *Wil-Nor Corporation v. Zoning Board of Appeals*, 146 Conn. 27, 31.
- ¹⁵ *Fox v. Zoning Board of Appeals*, 146 Conn. 70.
- ¹⁶ *Talarico v. Conkling*, 168 Conn. 194.
- ¹⁷ *The Service Realty Corporation v. Planning and Zoning Board*, 141 Conn. 632.
- ¹⁸ *Bora v. Zoning Board of Appeals*, 161 Conn. 297.
- ¹⁹ *Gangemi v. Zoning Board of Appeals*, 255 Conn. 143.
- ²⁰ *Spalding v. Zoning Board of Appeals*, 144 Conn. 719, 722; *Abel v. Zoning Board of Appeals*, 172 Conn. 286, 289; *Farrington v. Zoning Board of Appeals*, 177 Conn. 186, 189; *Pollard v. Zoning Board of Appeals*, 186 Conn. 32, 39.
- ²¹ *Balknap v. Zoning Board of Appeals*, 155 Conn. 380, 384; *Pollard v. Zoning Board of Appeals*, 186 Conn. 32, 39.
- ²² *Eagan v. Zoning Board of Appeals*, 20 Conn. App. 561.
- ²³ *Libby v. Zoning Board of Appeals*, 143 Conn. 46; *Dolan v. Zoning Board of Appeals*, 156 Conn. 426, 431; *Carlson v. Zoning Board of Appeals*, 158 Conn. 86, 89.
- ²⁴ *Grillo v. Zoning Board of Appeals*, 206 Conn. 362, 370.
- ²⁵ *Benoit v. Zoning Board of Appeals*, 148 Conn. 443.
- ²⁶ *Jackson's Inc. v. Zoning Board of Appeals*, 21 Conn. Sup. 102.
- ²⁷ *Benoit v. Zoning Board of Appeals*, 148 Conn. 443; *Garibaldi v. Zoning Board of Appeals*, 163 Conn. 235, 239.
- ²⁸ Section 8-7(b) of the General Statutes.
- ²⁹ 2 Anderson, *American Law of Zoning* § 14.9, Page 662.
- ³⁰ *Carlson v. Zoning Board of Appeals*, 158 Conn. 86, 89.
- ³¹ *Highland Park, Inc. v. Zoning Board of Appeals*, 155 Conn. 40, 43.
- ³² *Garibaldi v. Zoning Board of Appeals*, 163 Conn. 235, 239.
- ³³ *Johnnycake, Inc. v. Zoning Board of Appeals*, 180 Conn. 296, 301; *Kulak v. Zoning Board of Appeals*, 184 Conn. 479, 481.
- ³⁴ *Stankiewicz v. Zoning Board of Appeals*, 15 Conn. App. 729, 733, 734.
- ³⁵ *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703, 714.
- ³⁶ *Grillo v. Zoning Board of Appeals*, 206 Conn. 362, 370.
- ³⁷ *Poneleit v. Dudas*, 141 Conn. 413, 417-18.
- ³⁸ *Brecciarolo v. Commissioner of Environmental Protection*, 168 Conn. 349, 355, 362 A.2d 948; *Bartlett v. Zoning Commission*, 161 Conn. 24, 31, 282 A.2d 907; *Horwitz v. Waterford*, 151 Conn. 320, 324, 197 A.2d 636; *Dooley v. Town Plan & Zoning Commission*, 151 Conn. 304, 311-312, 197 A.2d 770; *Stankiewicz v. Zoning Board of Appeals*, 15 Conn. App. 729, 735; *Archambault v. Wadlow*, 25 Conn. App. 375.
- ³⁹ *Samp Mortar Lake Company v. Town Planning & Zoning Commission*, 155 Conn. 310, 315-16; *Brecciaroli v. Commissioner of Environmental Protection*, 168 Conn. 349, 357.
- ⁴⁰ 8 McQuillan, *Municipal Corporations* (3rd Ed) § 25.138; *Hoshour v. Country of Contra Costa*, 203 Cal. App. 2d 602, 21 Cal. Rptr. 714; *Faucher v. Sherwood*,

321 Michigan 193, 32 N.W. 2d 440; *Richards v. Zoning Board of Appeals*, 285 App. Div. 287, 137 N.Y.S. 2d 603.

⁴¹ *Bartram v. Zoning Commission*, 136 Conn. 89, 94.

⁴² Anderson, *American Law of Zoning* § 14.68.

⁴³ *Dooley v. Town Plan & Zoning Commission*, 151 Conn. 304, 313; *Heady v. Zoning Board of Appeals*, 139 Conn. 463, 468; *Greenwich Gas Company v. Tuthile*, 113 Conn. 684.

⁴⁴ *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 145.

⁴⁵ *Haddam Zoning Board of Appeals v. Haddam Planning & Zoning Commission*, Superior Court at New Haven, case no. 195250 January 29, 1982.

⁴⁶ *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703, 714.

⁴⁷ *Salerni v. Scheuy*, 140 Conn. 556.

⁴⁸ *Guilford v. Landon*, 146 Conn. 178, 183; *Baccante v. Zoning Board of Appeals*, 153 Conn. 44, 47; *DeForest & Hotchkess Company v. Planning & Zoning Commission*, 152 Conn. 262, 268; *Woodford v. Zoning Commission*, 147 Conn. 30, 33; *Beerwort v. Zoning Board of Appeals*, 144 Conn. 731, 733.

⁴⁹ *Damick v. Planning & Zoning Commission*, 158 Conn. 78, 83, 84.

⁵⁰ *Hyatt v. Zoning Board of Appeals*, 163 Conn. 379, 384.

⁵¹ *Farrington v. Zoning Board of Appeals*, 177 Conn. 186, 189; *Johnnycake, Inc. v. Zoning Board of Appeals*, 180 Conn. 296, 300; *Kulak v. Zoning Board of Appeals*, 184 Conn. 479, 481; *Pollard v. Zoning Board of Appeals*, 186 Conn. 32, 44.

¹ *Summ v. Zoning Commission*, 150 Conn. 79.

² *American Law of Zoning*, § 824a.

³ *Service Realty Corp v. Planning & Zoning Board*, 141 Conn. 632, 636; *Garibaldi v. Norwalk Zoning Board of Appeals*, 163 Conn. 235.

⁴ *Harvey v. Zoning Board of Appeals*, 18 Conn. Sup. 43; *Powers v. Common Council*, 154 Conn. 156; *Shippee v. Zoning Board of Appeals*, 39 Conn. Sup. 436, 441.

⁵ *A.P.&W. Holding Corp. v. Planning & Zoning Board*, 167 Conn. 182, 185; *Housatonic Terminal Corp. v. Planning & Zoning Board*, 168 Conn. 304, 307.

⁶ *Harvey v. Zoning Board of Appeals*, 18 Conn. Sup. 43.

⁷ *Huhta v. Zoning Board of Appeals*, 151 Conn. 694, 697; *Service Realty Corporation v. Zoning Board of Appeals*, 141 Conn. 636.

⁸ *Goldreyer v. Zoning Board of Appeals*, 144 Conn. 641, 645; *Winslow v. Stamford Zoning Board*, 143 Conn. 381, 386.

⁹ *Mitchell Land Company v. Planning and Zoning Board of Appeals*, 140 Conn. 527, 534.

¹⁰ *Summ v. Zoning Commission*, 150 Conn. 79.

¹¹ *Abramson v. Zoning Board of Appeals*, 143 Conn. 211, 213; *WATR Inc. v. Zoning Board of Appeals*, 158, Conn. 196.

¹² *Parish of St. Andrews Church v. Zoning Board of Appeals*, 155 Conn. 350, 353.

-
- ¹³ *Beckish v. Planning & Zoning Commission*, 162 Conn. 11, 18; *Parish of St. Andrews Church v. Zoning Board of Appeals*, 155 Conn. 350, 354.
- ¹⁴ *Summ v. Zoning Commission*, 150 Conn. 79, 89.
- ¹⁵ *Woodford v. Zoning Commission*, 147 Conn. 30, 31; *Neilsen v. Board of Appeals*, 129 Conn. 285, 287; *Corsino v. Grover*, 148 Conn. 299, 310.
- ¹⁶ *Cameo Park Homes, Inc. v. Planning and Zoning Commission* 150 Conn. 672, 677; *Smith v. Z.B.A.*, 174 Conn. 323, 325.
- ¹ Section 8-8 of the General Statutes.
- ² *Foran v. Zoning Board of Appeals*, 158 Conn. 331, 340; *Tazza v. Planning & Zoning Commission*, 164 Conn. 187, 190.
- ³ *Tazza v. Planning & Zoning Commission*, 164 Conn. 187, 190.
- ⁴ *Bucky v. Zoning Board of Appeals*, 363 Atl. 2d 1119, 33 Conn. Sup. 607.
- ⁵ *Kuehne v. Town Council*, 136 Conn. 452, 462; *Devaney v. Board of Zoning Appeals*, 132 Conn. 218, 220; *Shulman v. Zoning Board of Appeals*, 143 Conn. 182; *Tazza v. Planning & Zoning Comm.*, 164 Conn. 187, 190; *A & B Auto Salvage Inc. v. Zoning Board of Appeals*, 189 Conn. 573, 578.
- ⁶ *Tyler v. Zoning Board of Appeals*, 145 Conn. 655; *Gregorio v. Zoning Board of Appeals*, 155 Conn. 422, 425.
- ⁷ *Hickey v. New London*, 153 Conn. 35; *London v. Planning & Zoning Commission*, 149 Conn. 282; *Langdein v. Planning Board of Stamford*, 143 Conn. 674.
- ⁸ *London v. Planning & Zoning Commission*, 149 Conn. 282; *Tyler v. Zoning Board of Appeals*, 145 Conn. 655.
- ⁹ *Luery v. Zoning Board*, 150 Conn. 136; *Fox v. Zoning Board of Appeals*, 146 Conn. 65.
- ¹⁰ *Josephson v. Planning Board*, 151 Conn. 489; *Krejtacio v. Zoning Board of Appeals*, 152 Conn. 657; *Tyler v. Zoning Board of Appeals*, 145 Conn. 655; *Leury v. Zoning Bd.*, 150 Conn. 136; *Vose v. Planning & Zoning Comm.*, 171 Conn. 480, 483.
- ¹¹ *Tucker v. Zoning Board of Appeals*, 151 Conn. 510; *Joyce v. Zoning Board of Appeals*, 150 Conn. 696.
- ¹² *I.R. Stich Associates, Inc. v. Town Council*, 155 Conn. 1, 3.
- ¹³ *Tyler v. Zoning Board of Appeals*, 145 Conn. 655.
- ¹⁴ *Barton v. Zoning Board of Appeals*.
- ¹⁵ *Zoning Board of Appeals v. Planning & Zoning Commission*, 27 Conn. App. 297.
- ¹⁶ *Craig v. Maher*, 174 Conn. 8, 9; *Goldfeld v. Planning & Zoning Commission*, 3 Conn. App. 172, 177.
- ¹⁷ *R&R Pool v. Zoning Board of Appeals*, 43 Conn. App. 563.
- ¹⁸ *Dietzel v. Planning Commission*, 60 Conn. App. 153, 159-160.
- ¹⁹ *M & R Enterprises, Inc. v. Zoning Board of Appeals*, 155 Conn. 280, 281; *Cowles v. Zoning Board of Appeals*, 153 Conn. 116, 117; *Dolan v. Zoning*

- Board of Appeals*, 156 Conn. 426, 428; *Edelson v. Zoning Commission*, 2 Conn. App. 595, 597.
- ²⁰ *Tyler v. Zoning Board of Appeals*, 145 Conn. 655, 661; *Jolly Inc. v. Zoning Board of Appeals*, 237 Conn. 184.
- ²¹ *Dupuis v. Zoning Board of Appeals*, 152 Conn. 308.
- ²² *Tyler v. Zoning Board of Appeals*, 145 Conn. 655.
- ²³ *Bouvier v. Zoning Board of Appeals*, 28 Conn. Sup. 278.
- ²⁴ *London v. Zoning Board of Appeals*, 150 Conn. 411; *Lathroo v. Planning & Zoning Commission*, 164 Conn. 215, 219; *Bencivengo v. Zoning Board of Appeals*, 2 Conn. App. 384, 387.
- ²⁵ *London v. Zoning Board of Appeals*, 150 Conn. 411.
- ²⁶ *Troriano v. Zoning Commission*, 155 Conn. 265, 268.
- ²⁷ *Bencivengo v. Zoning Board of Appeals*, 2 Conn. App. 384, 387.
- ²⁸ Section 8-8 General Statutes, 1958 Rev.
- ²⁹ *Wil-Nor v. Zoning Board of Appeals*, 146 Conn. 27; *Tazza v. Planning & Zoning Commission*, 164 Conn. 187, 190; *Marino v. Zoning Board of Appeals*, 22 Conn. App. 606, 609; *Caserta v. Zoning Board of Appeals*, 226 Conn. 80, *Conetta v. Zoning Board of Appeals*, 42 Conn. App. 133.
- ³⁰ *Stankiewicz v. Zoning Board of Appeals*, 211 Conn. 76, 15 Conn. App. 729.
- ³¹ *Torsiello v. Zoning Board of Appeals*, 3 Conn. App. 47, 49, 50; *Goldfeld v. Planning & Zoning Commission*, 3 Conn. App. 172, 178; *Green v. Zoning Board of Appeals*, 4 Conn. App. 500, 502; *Marino v. Zoning Board of Appeals*, 22 Conn. App. 606, 608.
- ³² *Burnham v. Planning & Zoning Commission*, 189 Conn. 261, 265; *Hoagland v. Zoning Board of Appeals*, 1 Conn. App. 285, 290; *Green v. Zoning Board of Appeals*, 4 Conn. App. 500, 502.
- ³³ *Sakson Nursery Inc. v. Planning & Zoning Commission*, 30 Conn. App. 627, 629.
- ³⁴ *Johnson v. Zoning Board of Appeals*, 2 Conn. App. 24, 26, 27.
- ³⁵ *Vogue v. Zoning Board of Appeals*, 165 Conn. 749, 754.
- ³⁶ *Watson v. Howard*, 138 Conn. 464, 470.
- ³⁷ *Boardsen v. Zoning Board of Appeals*, 20 Conn. App. 462, 464.
- ³⁸ *Johnson v. Zoning Board of Appeals*, 166 Conn. 102.
- ³⁹ *Schwartz v. Planning & Zoning Comm.*, 168 Conn. 285.
- ⁴⁰ *Olsen v. Zoning Board of Appeals*, 5 Conn. App. 455, 456, 457.
- ⁴¹ Section 8-8 of the General Statutes.
- ⁴² Section 8-8 of the General Statutes.
- ⁴³ *McCrann v. Town Planning & Zoning Commission*, 161 Conn. 65, 74; *Morningside Assn. v. Plan & Zoning Board*, 162 Conn. 154, 157; *Coyle v. Plan & Zoning Commission*, 162 Conn. 233, 236; *Byington v. Zoning Commission*, 162 Conn. 611, 613; *Bora v. Zoning Board of Appeals*, 161 Conn. 297, 300; *Shoemaker v. Zoning Commission*, 164 Conn. 210.
- ⁴⁴ *Totino v. Zoning Board of Appeals*, 41 Conn. Supp. 398, 401.

-
- ⁴⁵ *Cumberland Farms v. Groton*, 247 Conn. 196.
- ¹ *Devaney v. Board of Appeals*, 132 Conn. 537, 539; *State v. Hillman*, 110 Conn. 92, 100.
- ² *Euclid v. Ambler Realty Company*, 272 U.S. 365.
- ³ *Town of Windsor v. Whitney*, 95 Conn. 357, 368; *State v. Kieuman*, 116 Conn. 458, 463.
- ⁴ *State v. Hillman*, 110 Conn. 92; *State v. Heller*, 123 Conn. 492, 497.
- ⁵ *Meriden v. West Meriden Cemetery Association*, 83 Conn. 204, 207.
- ⁶ *Ingraham v. Brooks*, 95 Conn. 317, 328.
- ⁷ *Strain v. Mims*, 123 Conn. 275; *Florentine v. Darien*, 142 Conn. 415, 423.
- ⁸ *State v. Hillman*, 110 Conn. 92, 100.
- ⁹ *Corthouts v. Newington*, 140 Conn. 284, 288.
- ¹⁰ *St. John's Roman Catholic Church Corporation v. Darien*, 149 Conn. 712.
- ¹¹ *Clark v. Town Council*, 145 Conn. 476, 482.
- ¹² *Chouinard v. Zoning Commission*, 139 Conn. 728, 732.
- ¹³ *State v. Cullum*, 110 Conn. 291, 295; *State v. Hurliman*, 143 Conn. 502, 505.
- ¹⁴ Section 8-24 of the General Statutes.
- ¹⁵ Section 10-291 of the General Statutes.
- ¹ *Village on the Hill, Inc. v. Massachusetts Turnpike Authority*, 348 Mass. 107.
- ¹ *Bouvier v. Zoning Board of Appeals*, 28 Conn. Sup. 278.
- ² *Wallingford v. Roberts*, 145 Conn. 682.
- ³ *Tallman v. East Haven*, 135 Conn. 593, 594.
- ⁴ *Bianco v. Darien*, 157 Conn. 548, 555; *Wallingford v. Roberts*, 145 Conn. 682, 685; *West Hartford v. Rachel*, 190 Conn. 114, 120.
- ⁵ 31 C.J.S., Estoppel, § 138.
- ⁶ *Cities Service Oil Co. v. City of Des Plaines*, 21 Ill.2d. 157, 161, 171 N.E. 2d 605.
- ⁷ *Fawcett v. New Haven Organ Co.*, 47 Conn. 224, 227; *State ex rel DeGregorio v. Woodruff*, 135 Conn. 31 36; *Tradesmens National Bank v. Minor*, 122 Conn. 419, 424.
- ⁸ *Linahan v. Linahan*, 131 Conn. 307, 327; *Myers v. Burke*, 120 Conn. 69, 76; *Weidemann v. Springfield Breweries Co.*, 78 Conn. 660, 664.
- ⁹ *Rathkopf Law of Zoning and Planning* (3d Ed.) Chap. 67, § 2, p. 67-3.
- ¹⁰ 28 Am. Jur. 2d Estoppel and Waiver, § 133; *Zoning Commission v. Lescynski*, 188 Conn. 724, 731, 732; *West Hartford v. Rachel*, 190 Conn. 114, 121.
- ¹¹ *Bloom v. Zoning Board of Appeals*, 233 Conn. 198.
- ¹² *Town of Watertown v. Lamphier*, 18 Conn. Sup. 518.
- ¹³ *Town of Wallingford v. Roberts*, 145 Conn. 682; *Groton v. Taresevich*, 165 Conn. 86.
- ¹⁴ *Town of Guilford v. Landon*, 146 Conn. 178.
- ¹⁵ *Adley v. Paier*, 148 Conn. 84.
- ¹⁶ *Johnson v. Guarino*, 22 Conn. Sup. 235.
- ¹⁷ *Rathkopf*, Chapter 66, § 9.

¹⁸ Anderson, American Law of Zoning § 13.02.

¹⁹ Anderson, American Law of Zoning § 13.03.