

ZONING
Ch. 124

trine of issue preclusion from bringing new action against lessee; lessor had argued in prior action that lease was illegal, as it left lessor with fewer parking spaces than required by site plan for lessor's own building, town had cited lessor for zoning violation but had not issued a cease and desist order, and lessor had failed to appeal zoning board's denial of variance for parking space requirements. 12 Havemeyer Place Co., LLC v. Gordon (2006) 888 A.2d 141, 93 Conn. App. 140. Judgment ⇨ 720

Res judicata did not preclude reconsideration of variance from which no appeal was taken even though statute existed which would affect variance where statute did not exist at time variance was granted. Reid v. Zoning Bd. of

Appeals of Town of Lebanon (1996) 670 A.2d 1271, 235 Conn. 850. Judgment ⇨ 739

162. Exhaustion of administrative remedies

Town zoning commission's denial of landowner's application for special exception to develop a rear lot was an enforcement of zoning regulations, and not a legislative action, and thus, landowner was required to appeal decision to town zoning board of appeals under town zoning regulations to exhaust its administrative remedies before appealing to superior court. Jewett City Savings Bank v. Town of Franklin (2006) 907 A.2d 67, 280 Conn. 274. Zoning And Planning ⇨ 1571

§ 8-6a. Appeal to be heard before variance when both joined

Whenever an application to a zoning board of appeals for the grant of a variance is joined with an appeal from any order, requirement or decision made by the official charged with the enforcement of this chapter, or any bylaw, ordinance or regulation adopted under the provisions of this chapter, the board shall first decide the issues presented by such appeal.

(1975, P.A. 75-86, § 1.)

Law Review and Journal Commentaries

Regional welfare analysis in zoning actions.
12 Conn.L.Rev. 93 (1979).

Library References

Zoning and Planning ⇨ 1343.
Westlaw Topic No. 414.

Research References

Treatises and Practice Aids

- 9 Connecticut Practice Series § 8:6, Reviewing Decisions of the Zoning Enforcement Authority.
- 9 Connecticut Practice Series § 9:7, Limits on Variances for Conforming Lots.
- 9 Connecticut Practice Series § 21:8, Agency Resolutions; Zoning Board of Appeals.

Notes of Decisions

Remand 1

denial of building permit before board can act on applicant's request for variance. Wnuk v. Zoning Bd. of Appeals of City of New Britain (1993) 626 A.2d 698, 225 Conn. 691. Zoning And Planning ⇨ 1535

1. Remand

Zoning board of appeals must decide applicant's appeal from zoning enforcement officer's

§ 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements

The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged

with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. An appeal shall not stay any such order, requirement or decision which prohibits further construction or expansion of a use in violation of such zoning regulations except to such extent that the board grants a stay thereof. An appeal from any other order, requirement or decision shall stay all proceedings in the action appealed from unless the zoning commission or the officer from whom the appeal has been taken certifies to the zoning board of appeals after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed, except by a restraining order which may be granted by a court of record on application, on notice to the zoning commission or the officer from whom the appeal has been taken and on due cause shown. The board shall hold a public hearing on such appeal in accordance with the provisions of section 8-7d. Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals grants or denies any special exception or variance in the zoning regulations applicable to any property or sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision and the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based. Notice of the decision of the board shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person who appeals to the board, 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. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special exception or variance or took such appeal may provide

for the publication of such notice within ten days thereafter. Such exception or variance shall become effective upon the filing of a copy thereof (A) 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 such district is located, and (B) in the land records of the town in which the affected premises are located, in accordance with the provisions of section 8-3d.

(1949 Rev., § 843; 1951, Supp., § 159b; 1953, Supp. § 285c; 1955, Supp. § 378d; 1959, P.A. 458; 1959, P.A. 577, § 5; 1959, P.A. 614, § 4; 1963, P.A. 55, § 1; 1965, Feb.Sp.Sess., P.A. 622, § 2; 1967, P.A. 884, § 1; 1971, P.A. 862, § 4, eff. Oct. 1, 1971; 1975, P.A. 75-86, § 2; 1977, P.A. 77-450, § 3; 1977, P.A. 77-509, § 6; 1984, P.A. 84-122; 1987, P.A. 87-215, § 4, eff. July 1, 1987; 1989, P.A. 89-356, § 13; 2003, P.A. 03-144, § 2; 2003, P.A. 03-177, § 4.)

Historical and Statutory Notes

Amendments

1959 Amendments. 1959, P.A. 458, substituted reference to applicant to the zoning board of appeals for reference to appellant to such board.

1959 P.A. 577, § 5, changed section by inserting the words "but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located".

1959 P.A. 614, § 4, further changed section by substituting "Notice of the time and place of such hearing shall 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 such hearing. Said board shall decide such appeal within sixty days after the hearing" for the words "and to the public and decide the same within a reasonable time".

1963 Amendment. 1963, P.A. 55, § 1, required the board to state its reasons for denial of special exceptions or variances and required a statement of reasons for sustaining orders, requirements or decisions appealed.

1965 Amendment. 1965, Feb.Sp.Sess., P.A. 622, § 2, added the present second and third from the last sentences; deleted at the end of the section the following language: ", and notice of such filing shall have been published in a newspaper having a substantial circulation in the municipality before such effective date. Appeals from such decisions of the board may be made by persons aggrieved in the manner set forth in section 8-8 within fifteen days from the effective date thereof, the time limitations set forth in section 8-8 notwithstanding."

1967 Amendment. 1967, P.A. 884, § 1, provided for notice of the board's decision by certified mail to any person who appeals to the

board, within ten days after such decision has been rendered instead of former provision requiring such certified mailing within three days after such decision.

1971 Amendment. 1971, P.A. 862, § 4, substituted, "within sixty-five days after receipt of the notice of appeal, hear such" for "fix a reasonable time for the hearing of any" following "Said board shall"; increased the number of days the board is to decide such appeal to "sixty-five" from "sixty" days; and increased the number of days to within "fifteen" days from "ten" days.

1975 Amendment. 1975, P.A. 75-86, § 2, required the board's statement of reasons to include the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, to describe specifically the exceptional difficulty or unusual hardship on which its decision is based.

1977 Amendments. 1977, P.A. 77-450, § 3, substituted requirement that the board hear the appeal and give due notice thereof to the parties within the time permitted under § 8-7d for requirement that the board hear the appeal and give due notice thereof to the parties within 65 days after receipt of notice of appeal, and deleted requirement that the board shall decide the appeal within 65 days after the hearing.

1977, P.A. 77-509, § 6, inserted the fourth sentence; inserted, in the fifth sentence, "from any other order, requirement or decision" following "An appeal"; and amended the last sentence by substituting "or variance" for ", variance or reversal" following "Such exception", by substituting "upon the filing of" for "at such time as is fixed by the board, provided" following "shall become effective", by substituting "(1)" for "shall be filed" following "a copy thereof", and by adding subd. (2).