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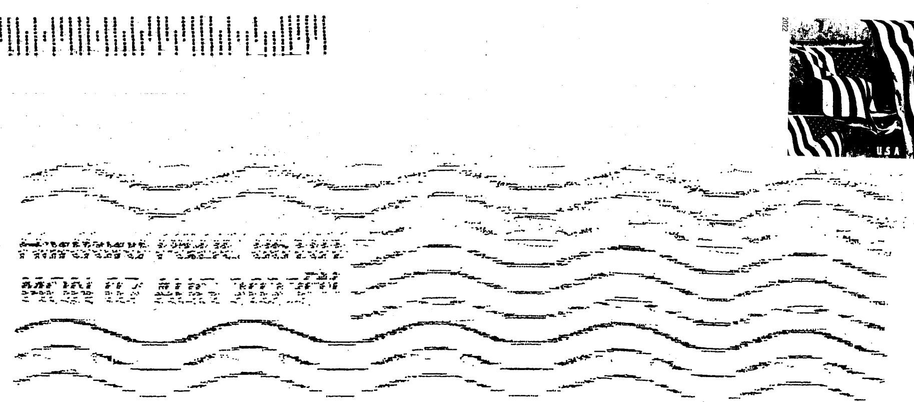

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Summer 2023 Volume XXVII, Issue 3

HOW TO DETERMINE THE NEED FOR AFFORDABLE HOUSING

A denial of a zone change application to permit the construction of a 109-unit affordable housing set-aside development on a 59-acre parcel was appealed to court pursuant to Connecticut General Statutes Sec. 8-30g. The language of this state law requires the commission, not the applicant, to demonstrate that the evidence presented during the public hearing on the application supports its denial. Basically, the commission needs to show that its decision is supported by evidence in the record that the denial is necessary to protect a substantial public interest in health, safety or other matters it can legally consider and that such interest clearly outweighs the need for affordable housing.

In sustaining the appeal and reversing the commission's decision, the court addressed how to determine what is the need for affordable housing. First, the need for affordable housing is to be addressed on a local, not a state wide basis. Second, in making this determination, a municipality's progress in meeting its need for affordable housing is a factor to be considered by the court. In determining progress, the court would consider such positive actions by a municipality as adopting affordable housing regulations, amending its plan of conservation and development to encourage such housing and approving affordable housing projects. In this case, the town in question had done almost nothing to address its affordable housing needs, with only 2.5% of its housing qualified as affordable. Thus, any safety concerns over access, and road width were insufficient as they did not clearly outweigh the need for affordable housing in this town. *Hopp Brook Developers LLC v. Beacon Falls Planning & Zoning Commission, HHD-CV-22-6152301 (4.17.23).*

DISTRICT COURT ISSUES REMINDER TO TREAT RELIGIOUS AND SECULAR USES THE SAME

A religious group applied for a special permit so that they could use an existing building located within a planned industrial zone as their house of worship. The zone in question was known as the M-4 planned industrial zone whose purpose was to encourage well-planned integrated developments of industrial and office use with supportive commercial uses. Permitted uses included offices, hotels, convention centers, shops, restaurants and theaters. When their special exception application was denied, the group appealed the decision to the U.S. District Court for Connecticut alleging violations under RLUIPA, CFRA and the U.S Constitution.

The Court found that the Commission's decision violated RLUIPA as well as the Equal Protection and Free Exercise of Religion clauses of

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the U.S. Constitution's First Amendment, because the Commission's regulations treated houses of worship less favorably than similar secular uses without a showing that such disparate treatment furthers a government interest of the highest order and was the least restrictive means for doing so.

While it was possible for the religious group to obtain a special permit for its use of the building as their house of worship, requiring them to go through the special permit process while other similar, secular uses such as a theater, are allowed as of right, was clear evidence of the unfavorable disparate treatment.

The religious group also brought its appeal under the Connecticut Religious Freedom Act. However, under this state law, the use of a building as a house of worship is not included as a religious act and thus not covered by this state law. *Omar Islamic Center Inc. v. Meriden Planning Commission, 3:19-CV-00488 (SVN) (9/30/22) D. Conn.*

CERTIFICATES OF LOCATION TO BE APPROVED BY ZEOs

Public Act No. 23-40 amended, among other things, Connecticut General Statutes Sec. 14-54. This state law governed the approval process for certificates of approval for the location of an automobile dealer or repairer's license. No longer will planning and zoning commissions or zoning board of appeals be bothered with these applications. Instead, the application will go to the municipal zoning official for his or her approval. The Federation wonders if this will start a trend of transferring decision making from zoning agencies to staff. Past issues of this letter reveal prior bills seeking to transfer site plan and subdivision approvals to staff.

OFF PREMISES SIGNS CAN BE REGULATED DIFFERENTLY THAN ON PREMISES SIGNS

A city zoning ordinance was challenged on First Amendment grounds because it treated off-premises advertising signs differently from advertising signs located on the same property as the business it advertised. The basis for the appeal was that the ordinance did not treat all signs the same. Instead, based upon the content of the sign, it subjected off-premises signs with more regulatory burdens than on-premises signs.

The court disagreed. Following the U.S. Supreme Court's decision in *City of Austin v. Reagan National Advertising, 142 S. Ct. 1464 (2022),* the court ruled that the City's ordinance was not content based as it did not target speech based upon its 'communicative content'. The rule that if you need to read a sign in order to apply a law, it is not content neutral was found to be too broad an interpretation of the free speech doctrine. By regulating offsite signs differently from onsite signs, the

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ordinance was simply imposing place restrictions on billboards and that doing so served a legitimate government interest of promoting traffic safety by limiting the distractions caused by billboards. *No. 20-1670 5th Cir. Appellate Court (1/4/23).*

MINIMAL IMPACT IS NOT THE SAME AS A SIGNIFICANT IMPACT

When does an inland wetlands and watercourses commission need to make a finding of no feasible and prudent alternative when approving an application? When it makes a finding that the proposed regulated activity will have a significant impact. A finding of minimal impact does not rise to the level of a significant impact. Thus, it was proper for a commission to approve an application to construct a home in an upland review area without making a finding of 'no feasible and prudent alternative' because the proposed activity would only have a minimal impact on a wetland. *Marlowe v. Sharon IWWC, LLI-CV-22-6031205 (6/7/23).*

FAIR SHARE HOUSING

Public Act No. 23-207 has, among other things, expanded the authority of the State Office of Policy and Management to determine each planning region of this State's affordable housing needs and then develop a methodology for allocating this need to every municipality. Certain cities are exempt. We should expect in the near future an attempt for this state imposed allocation of need to become an actual mandate. The Federation will consider what actions to take to protect local control over zoning.

ANNOUNCEMENTS

Membership Dues

Notices for this year's annual membership dues were mailed March 1, 2023. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly.

Workshops

Four hours of Commissioner training must be complete by the end of this year. At the price of $185.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. **Email us at contact.cfpza@gmail.com to schedule a workshop.**

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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