

A year in the life..

Land use law
developments in the last
year

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Zoning

Signs, signs. . .

- *Kuchta v. Arisian*, 329 Conn. 530 (2018)
 - Scope of authority to regulate signs under zoning

“Evidently dissatisfied” homeowner erected three signs on her property.

One stated: “I Do Not Recommend [JOHN DOE] REMODELERS.”

Another was caption: “[JOHN DOE] REMODELERS' TOTAL LAWSUITS,”

And a third contained bar graphs of lawsuits

- ZEO ordered them removed
- Zoning statute enables regulation of “advertising sign and billboard.”
- Next thing courts look to was dictionary definitions.
 - Looked at definitions contemporaneously to adopted of the zoning enabling act in 1931
- Held that definitions of “advertising” in modern dictionaries would include that kind of sign the definition of advertising in 1931 was limited to commercial signs

To appeal or not to appeal. . .

Lane v. Cashman, 179 Conn. App.
394 (2018)

- Zoning enforcement officer issued an order that the property owner all certain operations in a residential property related to activities that the owner asserted a part of a pre-existing legal nonconforming use

- Property owner did not file an appeal to the zoning board of appeals.
- Property owner asserted defense of a legal nonconforming use when town sued seeking an injunction to halt the activity
- The court found that the failure to file an appeal to the ZBA to assert the claim of nonconforming use barred it from raising it in the civil action

Statutory Changes

Nonconforming Uses

Special permit cannot be required to continue use:

Conn. Gen. Stat. Section 8-2 amended by Public Act 18-132:

Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations or require a special permit or special exception for any such continuance.

Nonconforming uses

- Conn. Gen. Stat. Section 8-2 amended by Public Act 17-39:

*Such regulations shall not terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure **voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure.***

Temporary Health Care Structures

Public Act 17-155 (Conn. Gen. Section 8-1bb):

- (1) *“Caregiver” means a relative, legal guardian or health care agent who is responsible for the unpaid care of a mentally or physically impaired person. . .*
- (3) *“Temporary health care structure” means a transportable residential structure . . . that (A) is primarily assembled at a location other than the site of installation, (B) has one occupant who is the mentally or physically impaired person, (C) is not larger than five hundred gross square feet, (D) is not placed on or attached to a permanent foundation, and (E) complies with the applicable provisions of the [fire and public health codes]*
- (b) *A temporary health care structure shall be allowed as an accessory use in any single-family residential zoning district on a lot . . . owned by a caregiver . . . and used as his or her residence. . . .*
- (j) *A municipality, by vote of its legislative body or, in a municipality where the legislative body is a town meeting, by vote of the board of selectmen, may opt out of the provisions of this section and the provision of subsection (a) of section 8–2 of the general statutes [after a public hearing, etc.]*

Temporary Health Care Structures

Public Act 17-155 amends 8-2 to provide:

Unless such town opts out, in accordance with the provisions of subsection (j) of section 1 of this act, such regulations shall not prohibit the installation of temporary health care structures for use by mentally or physically impaired persons . . . if such structures comply with the provisions of said section.

More Signs

- Regulation of brightness and illumination of advertising signs and billboards

Public act 18-28 amended Section 8-2 to include:

[zoning regulations can regulate] the height, size, ~~and~~ location, **brightness and illumination**

d) Any advertising sign or billboard that is not equipped with the ability to calibrate brightness or illumination shall be exempt from any municipal ordinance or regulation regulating such brightness or illumination that is adopted by a city, town or borough after the date of installation of such advertising sign or billboard pursuant to subsection (a) of this section.

Wetlands

Finding of no feasible and prudent alternative is mandatory

- *Starble v. Inland Wetlands Comm'n of Town of New Hartford*, 183 Conn. App. 280 (2018)

- Application to build a driveway across the wetlands
 - Neighbors expert asserted that a feasible and prudent alternative existed to move the house on the other side of the lot
 - Applicant's expert found no or de minimis impacts on wetlands and concluded that construction on the western would involve more substantial impacts from significant cutting and filling and more stormwater runoff
 - Applicant's expert did not draw a plan showing the alternative he concluded was not feasible and prudent

- Commission found that the applicants expert was credible but stated in its decision that the neighbor/intervenor failed to prove that there was a feasible and prudent alternative

Trial court found that making an express finding regarding feasible and prudent alternatives was not mandatory.

Appellate Court reversed, holding:

- 1) Mandatory for commission to consider*
- 2) The applicant had the burden to prove the negative through presentation of an actual alternative*

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Statutory Changes

Nonconforming Uses

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Nonconforming uses

- Property owner must expressly intend to abandon continuation of a nonconforming use, building or structure
- Conn. Gen. Stat. Section 8-2 amended by Public Act 17-39:

Such regulations shall not terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure.

Temporary Health Care Structures

Public Act 17-155 (Conn. Gen. Section 8-1bb):

- (1) *“Caregiver” means a relative, legal guardian or health care agent who is responsible for the unpaid care of a mentally or physically impaired person.*
 - (2) *“Mentally or physically impaired person” means a person who requires assistance, as certified in writing by a physician licensed in this state, with two or more activities of daily living, including, but not limited to, bathing, dressing, grooming, eating, meal preparation . . .*
 - (3) *“Temporary health care structure” means a transportable residential structure that provides an environment in which a caregiver may provide care for a mentally or physically impaired person and that (A) is primarily assembled at a location other than the site of installation, (B) has one occupant who is the mentally or physically impaired person, (C) is not larger than five hundred gross square feet, (D) is not placed on or attached to a permanent foundation, and (E) complies with the applicable provisions of the State Building Code, Fire Safety Code and Public Health Code.*
- (b) A temporary health care structure shall be allowed as an accessory use in any single-family residential zoning district on a lot zoned for single-family detached dwellings that is owned by a caregiver or mentally or physically impaired person and used as his or her residence. . . .*
- ...
- (j) A municipality, by vote of its legislative body or, in a municipality where the legislative body is a town meeting, by vote of the board of selectmen, may opt out of the provisions of this section and the provision of subsection (a) of section 8–2 of the general statutes [after a public hearing, etc.]*

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Ready for another year..

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