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| DOCKET NO. CV-11-6018248 | : | SUPERIOR COURT |
| COMMUNITY SOLUTIONS, INC. | : | J.D. OF FAIRFIELD |
| V. | : | AT BRIDGEPORT |
| PLANNING & ZONING COMMISSION OF THE CITY OF BRIDGEPORT | : : | JUNE 19, 2012 |

**MEMORANDUM OF DECISION**

The plaintiff appeals from a decision of the defendant denying a second request for an extension of time of an approval of a special permit. The property involved is located at 4 Norman Street (a/k/a 34 and 48 Norman Street) and 828 Railroad Avenue Bridgeport, Connecticut. The plaintiff is the lessee of the property.

The following procedural facts are relevant to the court's determination and are undisputed. On September 19, 2008, the plaintiff petitioned the defendant for a special permit[1] and coastal site plan review to allow the plaintiff to renovate and use a former corset factory for a group living facility. The petitions were approved by the defendant on November 24, 2008. Pursuant to Section 14-4-5 of the Zoning Regulations[2] of the City of Bridgeport, the plaintiff applied to the defendant for an extension of the special permit approval. On October 26, 2009, the defendant granted the extension. The minutes of the meeting state that "the expiration date of the special permit approval . . . has been established as November 2, 2010." Additionally, a letter from Dennis Buckley, clerk of the defendant, to the plaintiff's attorney's law firm dated October 26, 2009 reflects the granting of the



[1] "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." *A. P. & W. Holding Corp.* v. *Planning & Zoning Brd.*, 167 Conn. 182, 184-85, 355 A.2d 91 (1974).

[2] That section provides that "[s]pecial permit approval shall expire twelve (12) months from the date of approval unless a full building permit has been issued and construction has commenced and is being diligently pursued, or an application for extension of time has been received by the Planning and Zoning Commission. Denial of an application for the extension of a special permit approval shall result in termination of the special permit approval.



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extension of time and notes the November 2, 2010 "expiration date." The plaintiff filed with the defendant on November 10, 2010 a petition seeking a second extension of time of the special permit approval.[3] The defendant denied the plaintiff's petition at a public hearing held on February 28, 2011, and stated its reasons for doing so on the record.[4] Attorney Edmund F. Schmidt, Associate City Attorney, said that the plaintiff's second requested extension was denied for the following reasons: "(1) The record clearly establishes that the existing permit expired on 11/2/10 and the request to extend the special permit was not filed until 11/12/10. The Minutes of the Planning & Zoning Commission meeting on 10/26/09 confirm that the expiration date was 11/2/10. This is further confirmed by the letter dated 10/27/09 from Dennis Buckley to Anne Marie Willinger, as well as the record of the public hearing on 10/26/09; [and] (2) The Commission finds that there have been material changes that have occurred in this neighborhood, such as the construction of a new elementary school; new and rehabilitated housing; as well as enhancement of park activities. Because of these material changes, this neighborhood is no longer suitable for a group living facility of this size and purpose."

The plaintiff appeals from the defendant's denial in 2010 of its second petition for an extension of time of the special permit approval originally obtained in 2008. Concerning the defendant's first reason in support of its denial, the plaintiff claims that the plain language of regulation at issue provides that any special permit approval is valid for twelve months. Therefore, the defendant violated the regulation by granting to the plaintiff an extension of

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[3] The record reflects that the plaintiff was having difficulty securing the funding necessary to move forward in the project.

[4] "Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations . . . . The [decision] must be sustained if even one of the stated reasons is sufficient to support it. . . . [This] applies where the agency has rendered a formal, official, collective statement of reasons for its action." (Citation omitted; internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, 220 Conn. 527, 544, 600 A.2d 757 (1991).

time of its special permit approval less than twelve months. As a corollary to that claim, the plaintiff contends that the November 2nd date established by the defendant was a scrivener's error because the date should have been November 24 and the number "4" was inadvertently omitted. Concerning the defendant's second reason in support of its denial, the plaintiff claims that the defendant's finding that there have been material changes in the neighborhood is not supported by substantial evidence.

The court must first address the issue of aggrievement. In support of its claim of aggrievement, the plaintiff has submitted an affidavit of its vice president stating that the plaintiff is the proposed lessee of the property and is adversely affected by the defendant's decision.[5]

"[P]leading and proof of aggrievement are prerequisites to [a] trial court's jurisdiction over the subject matter of a plaintiff's appeal ... [I]n order to have standing to bring an administrative appeal, a person must be aggrieved." (Citation omitted; internal quotation marks omitted.) *Moutinho* v. *Planning & Zoning Commission*, 278 Conn. 660, 664, 899 A.2d 26 (2006). "Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, 266 Conn. 531, 538–39, 833 A.2d 883 (2003).

"In zoning matters, aggrievement is the key to access to judicial review. . . . Proof of aggrievement is essential to a trial court's jurisdiction of a zoning appeal.

"[T]he fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a

[5] The parties agreed that the issue of aggrievement be determined by affidavit. The plaintiff filed its affidavit post hearing, and the defendant had the opportunity, if it was to contest the issue, to file a counter affidavit. The plaintiff's affidavit is unopposed. "Ordinarily, when issues of fact are necessary to the determination of the court's jurisdiction, a trial-like hearing must be held, in which the parties are provided an opportunity to present evidence and to cross-examine adverse witnesses. Affidavits, however, are an acceptable alternative to an evidentiary hearing when they disclose, as here, that no genuine issue as to a material fact exists." *Graham* v. *Estate of Graham*, 2 Conn. App. 251, 254 n. 1, 477 A.2d 158, cert. denied, 194 Conn. 805, 482 A.2d 710 (1984).

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 as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision. . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected. . . . The question of aggrievement is a factual one. . . . Accordingly, [o]ur review is to determine whether the judgment of the trial court was clearly erroneous or contrary to the law. (Internal quotation marks omitted; citations omitted) *Hayes Family* v. *Planning & Zoning Commission*, 98 Conn. App. 213, 219-20, 907 A.2d 1235 (2006), cert. denied, 281 Conn. 903, 904, 916 A.2d 44 (2007); *870 Post Road Corp.* v. *Planning Comm'n*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. 92-0126582 (September 3, 1993, *Lewis, J.*) (finding that proposed commercial lessee was aggrieved).

In view of the foregoing, the court finds that the plaintiff has established that it is aggrieved by the zoning decision of the defendant. See *Walgreen Eastern Co.* v. *Zoning Board of Appeals*, 130 Conn. App. 422, 425, 24 A.3d 27 (2011) (The plaintiff's "status as lessee established its aggrievement to pursue both appeals."). Therefore, the court will proceed to address the substantive claims of the parties.

I

The plaintiff's claims that the defendant's denial of its request to extend the time of the special permit approval violates §14-4-5 of the regulations. "[Z]oning regulations are local legislative enactments . . . and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes. . . . Moreover, regulations must be interpreted in accordance with the principle that a reasonable and rational result was intended.

"When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .

"Generally, it is the function of a zoning board . . . to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The trial court had to decide whether the board correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts. . . . In applying the law to the facts of a particular case, the board is endowed with . . . liberal discretion, and its action is subject to review . . . only to determine whether it was unreasonable, arbitrary or illegal. . . . Moreover, the plaintiffs bear the burden of establishing that the board acted improperly." (Citations omitted; internal quotation marks omitted.) *Alvord Investment, LLC* v. *Zoning Board of Appeals*, 282 Conn. 393, 408-09, 920 A.2d 1000 (2007).

In view of these legal principles, the court will turn to the merits of the plaintiff's claim. Section 14-4-5 of the zoning regulations provides, in relevant part, that "special permit approval shall expire twelve (12) months from the date of approval unless . . . an application for extension has been received by the Planning and Zoning Commission. Denial of an application for special permit approval shall result in termination of the special permit

approval." The regulation is clear and unambiguous in its terms, and does not result an absurd or unworkable result. It provides that a special permit approval "shall expire" twelve months from the date that the commission approves it. The regulation establishes a natural, or self-executing, expiration date for the approval of a special permit and allows for an extension of that date. It does not expressly or impliedly provide, as claimed by the plaintiff, that the defendant's granting of special permit approval must be for a definite period of twelve months. Further, the regulation does not expressly require the defendant to grant an extension, set a minimum or maximum period of time for any extension granted or limit the number of times that a party who receives special permit approval can seek an extension.

"[I]t is well established that a zoning commission has reasonable discretion in applying and interpreting its regulations." *Graff* v. *Zoning Board*, 277 Conn. 645, 667, 894 A.2d 285 (2006); See R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 23:5, p. 714 ("The extension of the time limits does not have to be for the maximum period in the statute."). "Since zoning regulations are in derogation of common law property rights, however, the regulation cannot be construed beyond the fair import of its language to include or exclude by implication that which is not clearly within its express terms." (Citations omitted; internal quotation marks omitted.) *Fillion* v. *Hannon*, 106 Conn. App. 745, 750-52, 943 A.2d 528 (2008).

In the present case, the plaintiff's petition for a special permit was granted on November 24, 2008. The defendant did not specify an expiration date for the approval. Therefore, in accordance with § 14-4-5 of the regulations, the approval was to naturally expire on November 24, 2009 unless the plaintiff filed an extension of time. The plaintiff filed a petition on October 5, 2009 seeking to extend the special permit approval for one year. The defendant granted the petition on October 26, 2009. In doing so, it did not extend the

approval for the requested year. Rather, the defendant expressly limited the extension to November 2, 2010, which was twenty-two days short of one year. The court finds that the defendant acted within its reasonable discretion in applying § 14-4-5 of the regulations to limit the extension of the special permit approval to less than the year sought by the plaintiff. The plaintiff's interpretation of the regulation would unduly restrict zoning authorities in dealing with a myriad of situations, such as the present one where an original special permit approval is given and multiple extensions of that approval are sought under circumstances where two years later no progress was made in furtherance of the special permit. To construe the regulation as impliedly legislating out the exercise of discretion by the defendant and mandating that special permit approvals and extensions thereof be for twelve months would lead to unworkable results in the administration of the zoning laws. Additionally, the court concludes that the plaintiff's claim of a scrivener error is wholly unsupported by the evidence. In view of the foregoing, the court finds that the decision of the defendant denying the plaintiff's a second extension of the special permit approval is not arbitrary, capricious or illegal, and, therefore, the plaintiff's appeal for that reason is dismissed.

II

Additionally, the defendant's second reason for denying the plaintiff a second extension of time is supported by substantial evidence in the record. "When a party files successive applications for the same property, a court makes up to two inquiries. The first is to determine whether the two applications seek the same relief. The zoning board determines that question in the first instance, and its decision may be overturned only if it has abused its discretion. . . . If the applications are essentially the same, the second inquiry is whether there has been a change of conditions or other considerations have intervened which materially

affect the merits of the matter decided. (Internal quotation marks omitted.) *Laurel Beach Assn.* v. *Zoning Board of Appeals*, 66 Conn. App. 640, 645-46, 785 A.2d 1169 (2001).

As the plaintiff is appealing from the defendant's denial of an extension of time of the approval of the special permit that it received, the only applicable inquiry in the present case is whether the defendant acted improperly in finding that there has been a material change in conditions that materially affect the merits of the plaintiff's special permit approval. "The basic question before this court is whether the [defendant's] action is reasonably supported by evidence in the record." *Rocchi* v. *Zoning Board of Appeals*, 157 Conn. 106, 110, 248 A.2d 922 (1968).

"In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule, according to which . . . [c]onclusions reached by [a zoning] commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [commission]. . . . The question is not whether the trial court would have reached the same conclusion . . . but whether the record before the [commission] supports the decision reached. . . . If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission. . . . The agency's decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given." (Citations omitted; internal quotation marks omitted.) *Cambodian Buddhist* v. *Planning & Zoning Comm.*, 285 Conn. 381, 427, 941 A.2d 868 (2008). With these principles in mind, the court addresses the

defendant's second reason for denying the plaintiff's request for a second extension of its special permit approval.

The defendant claims that there is substantial evidence in the transcript of the public hearing on February 28, 2011 to support the defendant's finding concerning material changes in the neighborhood. The court agrees.

Patricia Fardy, a former member and chairperson of the defendant, testified that the defendant "wanted to know about the land use and the area. It has changed over the last three years. There's new housing. There's a new school that just opened." Reverend Carl McCluster testified and referenced a senior housing project "three blocks away" and stated that "the existence of these seniors in this neighborhood represents a changed circumstance." Additionally, Reverend McCluster referenced that the "Bridgeport Neighborhood Trust . . . has renewed many houses within that community and the number of residents that actually live in the community has increased greatly." He also stated that the community use of Went Field, a neighborhood field, "has increased greatly." Anderson Ayala, a member of the City Council representing the neighborhood, testified to the existence of the senior housing project noted by Reverend McCluster, named the Eleanor and Franklin Center, and to recent funding "to build a brand new school two blocks away" and "to revitalize Went Park." Councilperson Ayala also offered her general observations for how "this neighborhood has changed." Attorney Michael Voytek testified on behalf of the leadership of Bridgeport's Neighborhood Revitalization Zones. He discussed demographic changes in the neighborhood as a result of changes in the housing market. Attorney Voytek specifically referred to twenty-seven units of housing at the intersection of Norman Street and Andover Street; ten units at Black Rock Avenue, Hanover Street and Lewis Street; and the conversion of the former Park City Hospital into the Eleanor and Franklin apartments. He further noted that "the use of Went

Park . . . as a premiere park in that area has increased substantially. Most notably by the Curry Day Little League and Bassick High School students and athletes. Suffice it to say that more children of all ages are using Went Field since 2008 . . . ." Finally, he stated that "there are larger school populations in the neighborhood as we mentioned, Cesar Batalia and Brighter Beginnings Charter School on Grove Street. We already talked about that."

The plaintiff did not present any evidence, by way of testimony or otherwise, in contradistinction to the evidence before the defendant. Rather, the plaintiff's attorney merely challenged the credibility of the witnesses and their lack of specificity,[6] and claimed that the evidence failed to establish the necessary material changes in circumstances. As indicted, the record discloses evidence that supports the defendant's decision to deny the extension of the plaintiff's special permit approval. Therefore, the plaintiff's appeal for that reason is dismissed.

III

In view of the foregoing, the plaintiff's appeal is dismissed.

Theodore R Tyma

TYMA, J.

[6] In this regard, the plaintiff's attorney acknowledged "a few cosmetic changes to the park," but asserted that "the park is still a very rough place to be."