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233 Conn. 198 (Conn. 1995)

658 A.2d 559

Hillard BLOOM et al.

v.

ZONING BOARD OF APPEALS OF the CITY OF NORWALK.

No. 15147.

Supreme Court of Connecticut.

May 16, 1995

Argued Feb. 9, 1995.

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Louis S. Ciccarello, with whom was Harry H. Hefferan, Jr., Norwalk, for appellants (plaintiffs).

Robert L. Genuario, Norwalk, for appellees (intervening defendant Kevin Conroy et al.).

Before PETERS, C.J., and BORDEN, BERDON, KATZ and PALMER, JJ.

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BERDON, Associate Justice.

The dispositive issue in this zoning appeal is whether the principles of equitable estoppel entitle the owners of a legally nonconforming building to a variance on the ground of hardship when, in reliance on an erroneously issued building permit, the owners have expanded and altered the building within the nonconforming areas. We conclude under the circumstances of this case that the property owners' reliance on an erroneous building permit does not constitute such a hardship.

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The following facts are undisputed. The defendants Kevin Conroy, Steven Cook and William Conroy (owners) ^[1] are the owners of a restaurant located at 89 Rowayton [658 A.2d 561] Avenue in Norwalk. The property is zoned for business and a restaurant is a permitted use. The building that houses the restaurant, however, is nonconforming because part of the structure is within the thirty-five foot front setback included in the Norwalk zoning regulations. ^[2] Because the building predates the present zoning regulations, it is a legally nonconforming structure that requires no modification. ^[3]

The owners decided to renovate the building and applied to the Norwalk zoning commission for approval. The proposed renovations included the construction of a dormer, which consists of a new raised roof with vertical windows, and the addition of a stoop. The proposed dormer was to be constructed above a nonconforming portion of the preexisting structure within the thirty-five foot setback. Also, the owners intended to add the stoop to a nonconforming portion of the building, slightly increasing the preexisting encroachment on the setback requirement. The owners did not provide the local zoning authorities with a map or survey indicating the front setback line.

On June 19, 1991, the Norwalk zoning enforcement officer approved the project and certified that it complied with applicable zoning regulations. On July 17, 1991, the plan review committee of

cross-examine adverse witnesses. *Standard Tallow Corp. v. Jowdy*, 190 Conn. 48, 56, 459 A.2d 503 (1983). Accordingly, the trial court incorrectly raised and decided the issue of whether the principles of equitable estoppel could support a hardship for the purposes of a variance.

II

We next turn to the alternate grounds for affirmance--the owners' contention that they have established a legally cognizable hardship. The standard of review on appeal from a zoning board's decision to grant or deny a variance is well established. We must determine whether the trial court correctly concluded that the

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board's act was not arbitrary, illegal or an abuse of discretion. *Schwartz v. Planning & Zoning Commission*, 208 Conn. 146, 152, 543 A.2d 1339 (1988); *Pike v. Zoning Board of Appeals*, 31 Conn.App. 270, 624 A.2d 909 (1993). "Courts are not to substitute their judgment for that of the board ... and 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.... We, in turn, review the action of the trial court.... The burden of proof to demonstrate that the board acted improperly is upon the plaintiffs." (Citations omitted; internal quotation marks omitted.) *Whittaker v. Zoning Board of Appeals*, 179 Conn. 650, 654, 427 A.2d 1346 (1980).

A variance constitutes permission to act in a manner that is otherwise prohibited under the zoning law of the town. *Burlington v. Jencik*, 168 Conn. 506, 508, 362 A.2d 1338 (1975). The Norwalk zoning regulations strictly limit the extent to which structural nonconformities may be expanded or altered. Norwalk Zoning Regs. § 118-800.

[658 A.2d 564] "A nonconforming structure shall not be enlarged or altered if the result would be an increase in the extent to which the structure does not conform to these regulations. A nonconforming structure may be enlarged or altered, provided that the enlargement or alteration conforms to these regulations." Norwalk Zoning Regs. § 118-800(D)(1). ^[10]

It is well established, however, that the granting of a variance must be reserved for unusual or exceptional

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circumstances. *Dolan v. Zoning Board of Appeals*, 156 Conn. 426, 429, 242 A.2d 713 (1968); *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 145, 215 A.2d 104 (1965); *Krejpcio v. Zoning Board of Appeals*, 152 Conn. 657, 661-62, 211 A.2d 687 (1965); *Kelly v. Zoning Board of Appeals*, 21 Conn.App. 594, 598, 575 A.2d 249 (1990). "An applicant for a variance must show that, because of some peculiar characteristic of his property, the strict application of the zoning regulation produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone." *Dolan v. Zoning Board of Appeals*, supra, at 430, 242 A.2d 713. Accordingly, we have interpreted General Statutes (Rev. to 1993) § 8-6 ^[11] to authorize a zoning board of appeals to grant a variance only when two basic requirements are satisfied: "(1) the variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship

unnecessary to the carrying out of the general purpose of the zoning plan." (Internal quotation marks omitted.) *Grillo v. Zoning Board of Appeals*, 206 Conn. 362, 368, 537 A.2d 1030 (1988); *Smith v. Zoning Board of Appeals*, 174 Conn. 323, 326, 387 A.2d 542 (1978). Proof of exceptional difficulty or unusual hardship is

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absolutely necessary as a condition precedent to the granting of a zoning variance. *Point O'Woods Assn., Inc. v. Zoning Board of Appeals*, 178 Conn. 364, 368, 423 A.2d 90 (1979); *Ward v. Zoning Board of Appeals*, supra, 143, 215 A.2d 104; *Kelly v. Zoning Board of Appeals*, supra, at 598, 575 A.2d 249. A mere economic hardship or a hardship that was self-created, however, is insufficient to justify a variance; *Krejpcio v. Zoning Board of Appeals*, supra, at 662, 211 A.2d 687; and neither financial loss nor the potential for financial gain is the proper basis for granting a variance. *Garibaldi v. Zoning Board of Appeals*, 163 Conn. 235, 239, 303 A.2d 743 (1972).

In order to determine whether the board properly granted the subject variance, we must first consider whether the board gave reasons for its action. *Scalzo v. Danbury*, 224 Conn. 124, 129, 617 A.2d 440 (1992); *Schwartz v. Planning & Zoning Commission*, supra, 208 at Conn. 152, 543 A.2d 1339. "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." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven*

[658 A.2d 565] from *Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, 220 Conn. 527, 544, 600 A.2d 757 (1991). Where a zoning board of appeals does not formally state the reasons for its decision, however, the trial court must search the record for a basis for the board's decision. *Connecticut Resources Recovery Authority v. Planning & Zoning Commission*, 225 Conn. 731, 743, 626 A.2d 705 (1993). In this case, although individual members of the board

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discussed reasons for granting the owners a variance, the board did not state a collective, official reason for its action. [12] Accordingly, we must search the record as a whole to determine whether the evidence supports the board's decision to grant the variance. *Id.*

During the public hearing regarding the variance, evidence was presented that the zoning commission had granted the owners a permit to proceed with the construction of the dormer and the stoop, and that the owners had relied in good faith on the building permit when they commenced construction. It is apparent from the record that the only evidence of hardship that the owners presented to the board consisted of their reliance on an improperly granted building permit. We can reasonably conclude from the record that the board granted the variance because it determined that the owners had received approval for the improvements from the zoning commission and to require the removal of the dormer and the stoop would constitute a hardship.

In order to justify a variance, the hardship must differ from the conditions that generally affect the property owners in the same area and it must arise from circumstances beyond the control of