

FST CV-13-6018486-S

SUPERIOR COURT  
STAMFORD - NORWALK  
JUDICIAL DISTRICT

SUPERIOR COURT

ELIZABETH WEED

2016 APR 11 P 4:00

JUDICIAL DISTRICT OF

v.

STAMFORD/NORWALK

TOWN OF NEW CANAAN ZONING  
BOARD OF APPEALS

APRIL 11, 2016

**MEMORANDUM OF DECISION**

On May 22, 2013, the plaintiff, Elizabeth Weed, commenced this administrative appeal from the decision of the defendant, the New Canaan Zoning Board of Appeals ("ZBA"), approving a variance application filed by PRC, LLC ("PRC"). On July 8, 2013, PRC filed a motion to intervene as a defendant, which was granted by the court (*Mintz, J.*) on September 26, 2013. After several modifications to the scheduling order, due to attempts by the parties to reach a resolution in both this matter and a related civil action,<sup>1</sup> this appeal was tried before the court (*D'Andrea, J.*) on September 16, 2015. Thereafter, the parties agreed to transfer this appeal to this court for a decision by joint stipulation on November 24, 2015. In connection with the joint stipulation, this court heard oral argument on December 18, 2015. The plaintiff, the ZBA, and PRC each submitted pretrial briefs as well as posttrial briefs, along with a variety of exhibits.

The variance application concerns proposed modifications to a dilapidated chapel building in New Canaan, and would allow PRC to perform various restorations to the subject property. As more fully set forth within this memorandum, the decision of the ZBA to grant the variance to PRC is affirmed and the plaintiff's appeal is dismissed.

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<sup>1</sup> The related matter, also before this court, is *Weed v. Sherwood*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-13-6018235-S.

## BACKGROUND

A review of the return of record in this appeal reveals the following facts. The property that is the subject of this appeal is a small, historic chapel structure ("Chapel") located on a legally nonconforming, undersized lot at 424 Ponus Ridge Road in New Canaan (together with the Chapel, the "Chapel Property"). The Chapel was built in 1911 to serve as a place of worship for the local community. In 1959, the Chapel Property was deeded to the newly formed Ponus Ridge Chapel and Community Association ("Chapel Association"), and thereafter, the Chapel was used for a period of time as a community center. By the 1970s, however, the community's use of the Chapel declined and ultimately ceased. For the past forty years, the Chapel has remained vacant and its condition has deteriorated. In its current state, the Chapel is unusable for its prior purpose due to safety concerns stemming from the condition of its roof, as well as the absence of parking and a functional septic system. While the Chapel is recognized as a historic structure in New Canaan, and there have been many inquiries over the years to the New Canaan Historical Society regarding its restoration, the 0.143 acre size of the Chapel Property has prevented a solution for the septic and parking issues, which, in turn, has impeded plans to restore the Chapel.

Several years ago, neighboring property owners Ainsley and Brendan Hayes took an interest in purchasing the Chapel Property in order to rehabilitate the Chapel for use as a residential guest house. To that end, the Hayeses formed PRC, and acted through PRC with the goal of purchasing the Chapel Property from the Chapel Association. PRC contacted the president of the Chapel Association, Edythe Sherwood, and negotiated the preliminaries of a sale of the Chapel Property that culminated in the execution of a letter of intent between Sherwood, as president of the Chapel Association, and PRC. PRC expended time and money to develop a

plan for the Chapel, which included detailed architectural renderings and a plan to grant an easement to the Chapel Property from the Hayes property for parking space and a septic system. Subsequently, PRC received an initial approval for the septic system from the state, with final approval contingent on PRC's acquisition of the Chapel Property.

The plan advanced by PRC requires renovations which exceed 50 percent of the value of the Chapel. Additionally, the Chapel is a non-conforming structure based on the size of the Chapel Property—0.143 acres in a two acre zone—and its prior use as a community center in a residential zone. Accordingly, in 2013, PRC filed an application with the ZBA as a “contract purchaser” of the Chapel Property along with an authorization to do so from Ms. Sherwood in her capacity as Chapel Association president. PRC seeks a variance from Section 7.1.B.5.b of the New Canaan Zoning Regulations, which provides:

A nonconforming structure may only be otherwise repaired, restored, rebuilt, replaced, or altered if such alterations: a. Do not increase the nonconforming aspect of the structure, and b. Comply with other applicable parts of these Regulations for the specific use and zone, and do not result in the repair or replacement of more than fifty percent (50 percent) of the existing structure.

The application submitted to the ZBA by PRC sought to renovate the existing Chapel by maintaining its footprint, exterior, and height, while replacing its roof and converting its interior to that of a residential home. The ZBA calendared the variance application filed by PRC for a hearing on April 1, 2013. Several days prior to the hearing, the plaintiff, a director of the Chapel Association and a neighboring landowner to the Chapel Property, became aware of efforts made by Sherwood to transfer the Chapel Property to PRC. The plaintiff attended the hearing and contested PRC's application for a variance on the ground that PRC did not have standing to file the variance application, and that PRC could not demonstrate a hardship justifying the grant of a

variance. Upon agreement of the parties, and motion by the ZBA, the ZBA voted to continue the hearing until May 6, 2013.

In the interim between the April hearing and the May hearing, both the plaintiff and PRC submitted letters to the ZBA that further discussed the parties' positions regarding PRC's standing to apply for a variance. The ZBA's counsel reviewed the letters, and advised:

The ZBA should hear this application. It has been represented that the [Chapel Property] is owned by the [Chapel Association]. The ZBA does not need to confirm this, since they do not resolve ownership issues. They can and should reasonably rely upon this representation. It has also been represented that [Sherwood] is the current president of the [Chapel] Association and she has granted the applicant, [PRC], authorization to file. Whether there are disputes or disagreements within the [Chapel] Association is not for the ZBA to consider. These facts alone are sufficient to allow this applicant to go forward. Return of Record, 16.

At the May hearing, the plaintiff again tried to raise the issue of standing with the ZBA. The plaintiff attempted to bring a variety of evidence before the ZBA pertaining to the absence of corporate approval for the sale of the Chapel Property to PRC, including evidence of the related civil lawsuit commenced by the plaintiff against Sherwood to enjoin the sale of the Chapel Property, but on the advice of counsel, the ZBA declined to hear the plaintiff's evidence. The ZBA determined that based upon the application and accompanying plans submitted by PRC, the authorization letter received by PRC from Sherwood, the Chapel Association president, and PRC's representations that it was a contract purchaser, PRC had standing to seek a variance. In response to the plaintiff's objections, the ZBA informed the plaintiff that it "can't dwell on [the standing issue]. We will take it as fact and go from there." ZBA Transcript, May 6, 2013 Hearing ("May Transcript"), at 18.

Having concluded that PRC had standing to submit a variance application, the ZBA then determined that PRC had established a hardship based upon:

- 1) [a]n undersized lot that predates zoning;
- 2) a historic structure that also predates zoning;
- 3) wetlands limiting buildable area; and
- 4) the fact that sanitary septic cannot be located on the property. ZBA Minutes, May 6, 2013 (the "May Minutes") at 7.

There is also some indication that the ZBA considered the plan proposed under PRC's variance application to reduce the nonconforming nature of the Chapel Property by converting it to a residential use. May Transcript at 74-75. Ultimately, the ZBA voted to unanimously grant the variance submitted by PRC. Taking issue with the determination by the ZBA that PRC was entitled to a variance, the plaintiff commenced this timely appeal.

#### DISCUSSION

"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 board's act was not arbitrary, illegal or an abuse of discretion. . . . Because the plaintiffs' appeal to the trial court is based solely on the record, the scope of the trial court's review of the board's decision and the scope of our review of that decision are the same. . . . The burden of proof to demonstrate that the board acted improperly is upon the plaintiffs." (Citations omitted; internal quotation marks omitted.) *E & F Associates, LLC v. Zoning Board of Appeals*, 320 Conn. 9, 14-15 (2015). "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 [the board] must be upheld by the trial court if they are reasonably supported by the record. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the [board] supports the decision reached. . . . The agency's decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons

given.” (Internal quotation marks omitted.) *Smith Bros. Woodland Management, LLC v. Zoning Board of Appeals*, 108 Conn. App. 621, 628 (2008), appeal dismissed, 293 Conn. 778 (2009).

On appeal, the plaintiff raises two challenges to the ZBA’s determination that PRC was entitled to a variance, one procedural and the other substantive. The plaintiff’s first challenge, which the plaintiff characterizes as the critical issue presented in this appeal, asserts that the ZBA improperly determined that PRC had standing to seek a variance because PRC was never actually a contract purchaser of the Chapel Property. The plaintiff’s second challenge, asserted more generally, challenges the ZBA’s determination that the hardship affects the Chapel Property and asserts that the ZBA failed to consider the impact that the Chapel development plan would have on the comprehensive plan for the neighborhood. The court will address the plaintiff’s challenges, and the parties’ arguments pertaining to them, in turn.

I. The ZBA’s Determination that PRC had Standing to Apply for a Variance

The plaintiff first argues that the ZBA should have considered evidence that casts doubt on PRC’s claim to be a contract purchaser of the Chapel Property on the theory that such doubts directly impact PRC’s standing to apply for a variance. The plaintiff argues that, to the extent that these issues were not a part of the record before the ZBA, the court may, and should, consider any issues pertaining to a party’s standing because standing implicates both the subject matter jurisdiction of the ZBA and, by extension, the subject matter jurisdiction of this court. Had the ZBA allowed the plaintiff to present the entirety of its evidence, the plaintiff asserts, it would have become clear to the ZBA that Sherwood, the Chapel Association’s president, never sought board approval from the Chapel Association prior to executing both the letter of intent which contemplated the ultimate sale of the Chapel Property to PRC, and the authorization

which allowed PRC to file for a variance. The plaintiff reasons that since any transaction with PRC would be dependent upon board approval by the Chapel Association, and because Sherwood had no authority to bind the Chapel Association to the sale of the Chapel Property in the first place, PRC was never actually a contract purchaser, and by extension, had no standing to apply for a variance with the ZBA. In further support of this assertion, the plaintiff points to other obstacles that would prevent the transfer of the Chapel Property to PRC, including claimed charitable use restrictions, which would prevent PRC's purchase of the Chapel Property.

In response, the defendants argue that substantial evidence supports the ZBA's determination that PRC had standing to apply for a variance and that, in accordance with the deferential standard used to review the ZBA's determinations, the court should limit its review of the ZBA's standing determination to whether substantial evidence exists in the record that was before the ZBA. The defendants assert that whether PRC had a binding contract or had final authority to purchase the Chapel Property are irrelevant considerations in the context of determining whether it had standing to seek a variance from the ZBA. The relevant inquiry for the ZBA to conduct in determining an applicant's standing to seek a variance, the defendants contend, is simply whether the applicant has an interest in the subject property. In the present case, the defendants insist that the ZBA properly determined that PRC, as a nonowner, had standing to seek a variance for the Chapel Property based on its representations to the ZBA, the letter of authorization that PRC had received from the Chapel Association's president to file the variance application, and the detailed plans which PRC submitted to the ZBA for consideration.

As a preliminary matter, the court disagrees with the defendant's contention that this court's review, in addressing an applicant's standing to apply for a variance, is limited to whether the ZBA's standing determination is supported by substantial evidence. The issue of

whether an applicant has standing to apply for a variance “implicates subject matter jurisdiction . . . . The issue of standing [in an appeal from the decision of a zoning board] is a question of law, and therefore subject to plenary review.” (Citation omitted.) *Greens Falls Associates, LLC v. Zoning Board of Appeals*, 138 Conn. App. 481, 485 (2012); see also *Richards v. Planning & Zoning Commission*, 170 Conn. 318, 321-24, 327 (1976) (employing plenary review to determine whether applicant had standing to seek variance from zoning board). Accordingly, this court’s review of the ZBA’s determination that PRC had standing to seek a variance is plenary. Nevertheless, the additional evidence submitted by the plaintiff pertaining to the Chapel Association’s corporate governance, or the alleged lack of board approval of the sale of the Chapel Property by the Chapel Association to PRC, is not dispositive of the inquiry into PRC’s standing to apply for a variance.

Considerations regarding corporate board approval of a contemplated transaction or a corporation’s authority to convey property are beyond the scope of a zoning board’s determination of whether a prospective purchaser-applicant has standing to seek a variance. In *Richards v. Planning & Zoning Commission*, supra, 170 Conn. 326, our Supreme Court rejected a nearly identical argument advanced by the plaintiffs, who challenged a zoning board’s decision to grant an application for a special permit filed by the defendant, the Wilton board of education, on a parcel of land owned by the town of Wilton. The defendant board was seeking a special permit to allow the storage of buses on town property that bordered the plaintiffs’ land. *Id.*, 319-20. The defendant board was not the owner of the property—the town was—but, as the *Richards* court noted, “[t]he issue . . . is whether [the board], although not the titleholder to the property, possess[ed] a sufficient interest in it . . . to constitute the legal interest required to make the present application.” *Id.*, 321. The plaintiffs argued that the defendant board did not have



standing to file its application because it was a nonowner, and did not have authority to engage in the activity at the basis of the permit application, or, in the alternative, did not yet have town approval for the purpose behind the permit for which it was applying.

Our Supreme Court soundly rejected the plaintiffs' arguments, explaining:

The plaintiffs claim, however, that the use applied for was not a 'school use' . . . and that the board, therefore, has no interest in the property with respect to the proposed use. We do not agree. It is true that the [zoning] commission considered the bus facility to be a 'municipal use,' but that fact does not control the board's standing to apply for a permit. . . . [E]ven if a proposed use were not clearly related to a duty of the board, *the zoning commission would not be the proper authority to determine that the board was acting outside the scope of its powers*. Sufficient checks on the board already exist. . . .

Finally, the plaintiffs argue that . . . *prior approval of the town would be required to carry out [the defendant's] plan*. That consideration, however, is not *determinative of the issue of standing*. Even if approval of the town is necessary, that would not negate the [defendant] board's interest in the property or its concern with the proposed site. Such approval is simply one step in carrying out a project involving the interplay of government functions. The acquisition of a permit is another step. . . . The zoning commission's approval does not authorize the board of education to erect the facility in total disregard of other requirements of law. (Citations omitted; emphasis added.) *Richards v. Planning & Zoning Commission*, supra, 170 Conn. 325-26.

Our Supreme Court's holding in *Richards* negates the plaintiff's arguments that issues with corporate authority have bearing on a ZBA's determination that an applicant has standing to seek a variance. Any evidence the plaintiff wished to provide to the ZBA pertaining to Sherwood's lack of authority, as president, to negotiate with PRC without board approval was properly excluded from consideration by the ZBA as irrelevant to the question of PRC's standing to seek a variance, and accordingly, does not guide this court's standing inquiry. As *Richards*

makes clear, the ZBA would not be the proper authority to determine Sherwood's authority to negotiate a transaction with PRC.<sup>2</sup>

Having concluded that an inquiry into corporate authority is unnecessary for the resolution of this appeal, the plaintiffs' argument contesting PRC's standing appears to be that a property owner or a contract purchaser are the only applicants who have sufficient interest to file for a variance application, and PRC does not fall into either category. This is not the standard by which a zoning board determines whether an applicant has standing to file for a variance. Again, the holding in *Richards* is instructive:

Where zoning ordinances have not specifically required owners to apply or to authorize the application, [our Supreme Court] has sustained the issuance of permits to persons who were not owners but who did have substantial interests in the subject property. . . .

From an examination of our cases and those of other jurisdictions, it is not possible to extract a precise comprehensive principle which adequately defines the necessary interest which a nonowner must possess in order to have standing to apply for a special permit or a variance. The decisions have not been based primarily on whether a particular applicant could properly be characterized as an optionee or a lessee, but, rather, on whether the applicant was in fact a real party in interest with respect to the subject property. Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant's interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination. (Citations omitted.) *Richards v. Planning & Zoning Commission*, supra, 170 Conn. 321-22, 323-24.

The decision in *Richards* establishes that the test used to evaluate the standing of an applicant to seek a variance is a flexible one, and in any event, is less strict than inquiry into

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<sup>2</sup> Instead, the proper authority to adjudicate matters of corporate governance and disputes concerning land transactions is the Superior Court, by way of a properly filed civil suit. In this instance, the plaintiffs have filed a related civil suit which addresses the issues the plaintiff has attempted to raise in this appeal. That civil action, not this ZBA appeal, is the appropriate forum in which to present evidence of Sherwood's alleged lack of authority to affect a sale of the Chapel Property without the approval of the Chapel Association board.

whether a plaintiff has demonstrated sufficient aggrievement to put judicial machinery in motion. “[A]ggrievement is a jurisdictional question, and therefore, the key to access to judicial review, [thus] the standard for aggrievement is rather strict. . . . Conversely, the standard for determining whether a party has standing to apply in a zoning matter is less stringent. A party need have only a sufficient interest in the property to have standing to apply in zoning matters.” (Citation omitted; internal quotation marks omitted.) *Gladysz v. Planning & Zoning Commission*, 256 Conn. 249, 257 (2001). “In zoning appeals, this court has not set forth a precise standard that defines the required interest a nonowner must possess . . . . Rather we have held that the extent to which a party with an interest in the property other than that of the owner depends upon the circumstances of each case, because the concept of standing is a practical and functional one designed to ensure that only those parties with a substantial and legitimate interest can appeal an order.” (Internal quotation marks omitted.) *Moutinho v. Planning & Zoning Commission*, 278 Conn. 660, 666 (2006). An enforceable contract is not an absolute prerequisite for a party to have standing to seek a variance. *Id.*, 669-70 (holding oral agreement for purchase of land sufficient to demonstrate ‘sufficient interest’ validating applicant’s standing despite statute of frauds).

When viewed in light of the flexible standard employed to evaluate an applicant’s standing to apply for a variance, the ZBA in this case appropriately determined that PRC was a real party in interest with respect to the Chapel Property. The record indicates that the ZBA considered PRC had permission to file for a variance from the president of the Chapel Association, had engaged in substantial talks which contemplated the sale of the Chapel Property to PRC, had planned the particulars of an acquisition and rehabilitation of the Chapel Property for several years, and had provided a detailed plan in connection with its application to the ZBA.

In other words, PRC had a potential future interest in the Chapel Property. That this interest was not guaranteed does not prevent PRC from obtaining a variance, which is merely one step among several that must be completed in the process of purchasing and rehabilitating a tract of land. PRC had expended time and money contemplating a purchase of the Chapel Property, and its application for a variance was consistent with the plans it presented to the board.

The plaintiff's position that a valid enforceable contract for the sale of real property is a prerequisite to filing for a variance on the property is not a correct statement of the law. The New Canaan Zoning Regulations do not require a variance applicant to own the property or be a contract purchaser of the property that is the subject of the variance application. In the same vein, the fact that PRC did not prove the elimination of any future obstacles, like charitable use restrictions, that may prevent PRC's acquisition of the Chapel Property does not negate PRC's standing. Importantly, the plaintiff does not contest the veracity of the authorization letter given to PRC by the Chapel Association president, nor does the plaintiff argue that PRC invented the existence of its negotiations to purchase the Chapel Property. Accordingly, PRC had standing to apply for a variance with the ZBA, and the ZBA's decision will not be disturbed on that ground.

## II. The ZBA's Determination to Grant PRC's Variance Application

Next, the plaintiff challenges the merits of the ZBA's determination to grant PRC's variance application by assigning error to (1) the ZBA's finding of hardship, and (2) the ZBA's failure to consider the substantial impact PRC's variance would have on the comprehensive plan. As to hardship, the plaintiff argues that PRC voluntarily assumed the nonconformity of the Chapel Property and for that reason any hardship claimed by PRC is self-imposed. The plaintiff asserts that it is irrelevant to PRC's variance application that the Chapel Property existed prior to

the adoption of zoning regulations in New Canaan. As for the ZBA's failure to consider the impact of the variance on the comprehensive plan, the plaintiff insists that allowing residential development on the "postage stamp-sized" Chapel Property plainly disregards the plan for a two-acre residential neighborhood, and that the ZBA failed to consider any other viable options for the Chapel Property. In summary, the plaintiff contends that substantial evidence demonstrates that PRC failed to meet its burden of demonstrating its entitlement to a variance.

In response, the defendants argue that the PRC's variance application was properly granted, and the ZBA's determination is supported by substantial evidence in the record. First, the defendants assert that PRC's request for a variance does not run afoul of the self-created hardship rule, because the Chapel Property's nonconformity was not created by PRC or any predecessor, but rather, predates the adoption of zoning regulations in New Canaan. Further, the defendants contend that New Canaan's comprehensive zoning plan was considered by the ZBA, and is served by the granting of the variance application because PRC's proposal reduces or eliminates a nonconforming use and preserves a historic structure.

The power of a zoning board to vary the literal application of the zoning regulations comes from General Statutes § 8-6 (a) (3). Section 8-6 (a) (3) provides, in relevant part:

The zoning board of appeals shall have the following powers and duties . . . (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship . . . .

"Under [Section] § 8-6 (a) (3), [a zoning] board may grant a variance provided (1) the variance is shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning regulation is shown to cause unusual hardship unnecessary to the

carrying out of the general purpose of the zoning plan.” (Footnote omitted.) *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703, 709 (1988).

As a threshold matter, the plaintiff has argued that substantial evidence demonstrates that the *applicant* has not met its burden to qualify for a variance. This is not the standard employed by this court in reviewing the decision to grant a variance by a zoning board. The correct inquiry is whether the determination of the *zoning board* is not supported by substantial evidence in the record. See *E & F Associates, LLC v. Zoning Board of Appeals*, *supra*, 320 Conn. 14-15. The showing required to satisfy this standard is a difficult one to meet, akin to what would be required to set aside a jury verdict. See *Martland v. Zoning Commission*, 114 Conn. App. 655, 663 (2009) (“[t]his so called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts” [internal quotation marks omitted]). The plaintiff’s arguments time and again reference how PRC “failed to demonstrate” its entitlement to a variance, but do not assert why the ZBA’s findings, set forth in the beginning of this memorandum, lack the support of substantial evidence in the record. At first glance, this seems like a fine distinction for the court to make, but it is an important one. If the court accepted the standard argued by the plaintiff, it would transform the review of a zoning board’s decision to grant a variance from the correct deferential standard to a *de novo* review. While on this basis alone the court could reject the plaintiff’s challenges to the merits of the ZBA’s decision, the court will address the plaintiff’s arguments.

The court disagrees with the plaintiff that PRC’s variance application runs afoul of the self-created hardship rule. Under the self-created hardship rule, “[w]here the applicant or his predecessor creates a nonconformity, the board lacks power to grant a variance. Where, however, the hardship is created by the enactment of a zoning ordinance and the [original] owner

of the parcel could have sought a variance, a subsequent purchaser has the same right to seek a variance and, if his request is supported by law, to obtain the variance.” *Kulak v. Zoning Board of Appeals*, 184 Conn. 479, 482 (1981). In this case, the ZBA expressly found that the hardship claimed by PRC—the undersized acreage of the Chapel Property within a two acre residential zone—existed prior to zoning ordinances in New Canaan. The ZBA plainly relied on substantial evidence sufficient to establish that the self-created hardship rule has no bearing on the ZBA’s finding of hardship on this basis.

The court also rejects the plaintiff’s contention that the ZBA failed to consider the impact that PRC’s proposed plan for the Chapel Property would have on the comprehensive plan for the plaintiff’s neighborhood. Our Appellate Court has interpreted the comprehensive plan requirement as referring to the “comprehensive plan . . . [which is stated] in the zoning regulations themselves.” *Pike v. Zoning Board of Appeal*, 31 Conn. App. 270, 277 (1993). In other words, the comprehensive plan reflects the overarching purpose of a town’s zoning regulations, as well as the permitted uses for specific zones. *Id.*, 277. The comprehensive plan requirement does not refer to the specific negative impacts that a variance may have on neighboring properties. See generally *id.*


In this case, the record indicates that the ZBA did consider the impact of the variance on the comprehensive plan as stated in the New Canaan Zoning Regulations. It considered that one of the stated purposes of the New Canaan Zoning Regulations involves protecting the character and the historic aspects of the town. See New Canaan Zoning Regulations § 1.2.c. The ZBA explicitly articulated that one of its reasons for granting the variance application filed by PRC was the historic nature of the Chapel Property and PRC’s plans to restore the Chapel Property for its preservation. It also noted that the New Canaan Zoning Regulations are to be employed in a

manner "[b]ringing about the gradual conformity of the uses of land and buildings to the Comprehensive Zoning Plan. . . ." See § 1.2.e. As the record indicates, the ZBA commented on how the development plan submitted by PRC would bring the Chapel Property closer in line with the surrounding residential zone by converting it from a decaying community center into a residential dwelling. Thus, substantial evidence does support that the ZBA considered the impact of a variance on the comprehensive zoning plan.

The plaintiff has not carried her burden to demonstrate that the ZBA's decision to grant the variance application filed by PRC was not supported by substantial evidence in the record. Therefore, the ZBA's decision to grant a variance to PRC is affirmed.

#### CONCLUSION

Accordingly, for the reasons discussed in this memorandum, the decision by the ZBA to grant the variance application filed by PRC is affirmed, and the plaintiff's appeal is dismissed, because PRC had standing to file for a variance and because the court finds that the ZBA's decision to grant a variance to PRC was supported by substantial evidence in the record.

  
Hon. Charles T. Lee

Decision entered in accordance with the foregoing. 4/11/16

All counsel and self-represented parties of record notified. 4/11/16

Adeline R. George  
Adeline R. George, TAC