

Legal Discussion of Hardship for Zoning Variance

Windsor Crossing, Bloomfield CT - Variance Application

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A nonconforming use may be intensified so long as its nature and character remain unchanged. The Connecticut Supreme Court held that a mere increase in the volume or intensity of use does not constitute an unlawful expansion.

Zachs – Connecticut Supreme Court Landmark Case Re: Variances

Zachs v. Zoning Board of Appeals, 218 Conn. 324 589 A2d 351 (1991), holds that a lawful preexisting nonconforming use may be intensified without being deemed an unlawful expansion, so long as the nature and character of the use remain unchanged and there is no substantial new impact on the surrounding neighborhood. In Zachs, the town attempted to prohibit increased activity at an existing radio transmission tower that pre-dated the zoning change, but the Connecticut Supreme Court rejected that approach, establishing that nonconforming uses are vested rights that run with the land and cannot be extinguished through zoning unless the changes alter the essential character or effects of the use. The Court adopted a **three-factor test**—examining (1) the original purpose of the use, (2) whether the proposed change alters its character or kind, and (3) whether there is a materially different neighborhood impact. These factors are now commonly used to distinguish lawful intensification from prohibited expansion.

Rule / Test Adopted – “Zachs Factors”

Courts determine whether a change to a nonconforming use is lawful by examining whether there is:

- A change in the nature and purpose of the use;
- A change in the character or kind of use; and
- A substantial difference in effect on the neighborhood resulting from the change

Reasoning

- Nonconforming uses are vested rights adhering to the land, protected even when zoning later changes.
- A lawful use cannot be eliminated by zoning unless the change fundamentally alters the nature or neighborhood impact of the use.
- Increased utilization that falls within the original character and purpose remains protected.

Practical Application

Courts applying Zachs principles, analyze Intensification of a Nonconforming Use as follows:

- Focus on character and impact, not simply numerical magnitude (e.g., more customers, more units, more employees).
- Treat changes as lawful intensification unless they introduce a different use or cause materially different external impacts.

Relevance to Current Variance Request

The Zachs case is routinely cited where a party argues they are merely completing or adding units or functions consistent with the originally-approved use. It supports the argument that a zoning board cannot deny intensification solely because activity increases, if the underlying use remains the same.

Considering the following facts while applying the Zachs' Analysis:

- The existing Development was legally approved under the Bloomfield Garden Apartment Zone which was repealed by the Town - unrelated to Applicant's conduct.
- CT law recognizes that Repealing a Zoning Regulation is unique to land itself that is subject to those Regulations, and as such may constitute a Hardship for purposes of granting a Variance.
- The requested Variance is consistent with the Development's use and purpose when approved under the then existing Garden Apartment Zoning Regulations.

- Although the Development is now a nonconforming use, it also constitutes a vested right that runs with the land and cannot be extinguished through zoning unless it alters the essential character of the existing use.
- The proposed seven (7) units are of the same use and purpose of the Development when originally approved.
- Five (5) units removed from the final plans in 1970 were to accommodate concerns about fire safety vehicle accessibility which issue no longer exists. The new units are no longer in the far Northwestern corner of the site but rather in the center of the site, and are accessible to all fire and public safety vehicles.
- The additional units do not change the character of the use or purpose of the nonconforming Development and are not incompatible with the approved use.
- The increase in the number of units is consistent with the original Development Plans and meets the density requirements of the Garden Apartment Zone.
- The addition of new units is also compatible with newly proposed apartment development plans being initiated in the surrounding neighborhood by the First Cathedral Church, Rehoboth Church of God, and the newly constructed Maribel Development across the street.
- There is no incompatible impact to the community or to the character of the surrounding neighborhood.

The Variance Request as analyzed above, is consistent with the Garden Apartment Zone Regulations allowed at that time and qualifies as a permissible intensification of a nonconforming use under Connecticut law and precedent.

Relevant State Statutes to Nonconforming Uses and Variances

CGS Section 8-2 (d) (4) (A) – Zoning Regulations shall not prohibit the continuance of any nonconforming use at the time of the Regulations.

CGS Section 8-6 (a) (3) – The ZBA can determine and vary regulations ... with respect to a parcel of land where, owing to the conditions especially affecting such parcel ... would result in ... unusual hardship... .