

Legislative History for Connecticut Act

HB 5670	PA 86 FAX	1975
House	1488-1496	(9)
Senate	1072-1073	(2)
General Law	57, 422, 424, 453	(4)
LAW/LEGISLATIVE REFERENCE DO NOT REMOVE FROM LIBRARY		
		15p



Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

Connecticut State Library

Compiled 2013

H-160

CONNECTICUT
GEN. ASSEMBLY

HOUSE

PROCEEDINGS
1975

VOL. 18

PART 3

977-1519

House of Representatives

Thursday, April 17, 1975

73
HMS

Remark further on the Amendment? The gentleman from the 62nd Representative Russell Post.

REP. POST (62nd):

Mr. Speaker, under the code of ethics I wish to excuse myself from the Chamber on this Bill.

THE SPEAKER:

The Journal will so note sir.

Will you remark further on the Amendment? If not, the question is on its adoption. All those in favor will indicate by saying Aye. Opposed? The Amendment is adopted. The Chair rules it a substantive, by rules it will be referred to the Legislative Commissioner's office.

THE CLERK:

Calendar 430. Substitute for House Bill 5670 AN ACT CONCERNING PROCEDURAL RIGHTS BEFORE A ZONING BOARD OF APPEALS.

THE SPEAKER:

The gentleman from the 11th, Representative Richard Willard.

REP. WILLARD (11th):

I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

THE SPEAKER:

Question is on acceptance and passage. Will you remark sir?

REP. WILLARD (11th):

The Clerk has an Amendment that's short. Could it be read please?

THE SPEAKER:

Clerk please read House "A".

THE CLERK:

House Amendment Schedule "A" offered by Mr. Collins of the 140th, Mr. Willard of the 11th.

House of Representatives

Thursday, April 17, 1975

74
HMS

In line 74 delete the words "In the case of a variance" and insert in lieu thereof "When a variance is granted".

THE SPEAKER:

Gentleman from the 11th.

REP. WILLARD (11th):

Mr. Speaker, to explain the Amendment I have to speak very briefly to the subject of the Bill.

THE SPEAKER:

Will the gentleman move the Amendment?

REP. WILLARD (11th):

Move the amendment.

THE SPEAKER:

Question is on adoption of the Amendment, the gentleman from the 11th for remarks.

REP. WILLARD (11th):

It is the feeling that the Bill should clearly reflect that the requirement of giving reasons as to exceptional difficulty or unusual hardship should only be applicable to the case where the variance is granted. There seemed to be some question in the original copy of the Bill as to whether or not that was the intent and therefore the Amendment.

THE SPEAKER:

Remark further on House "A"? Will you remark? The gentleman from the 89th.

REP. DICE (89th):

Mr. Speaker, proponent of the variance, if there is an appeal from the denial of the variance, are we in a position of not having the reasons for the denial?

THE SPEAKER:

House of Representatives

Thursday, April 17, 1975

75
mms

Is the gentleman posing a question to the gentleman from the 11th?

REP. DICE (89th):

I am. I'm sorry Mr. Chairman.

THE SPEAKER:

The gentleman from the 11th care to respond?

REP. WILLARD (11th):

I'm sorry, could you repeat it? Someone was talking.

REP. DICE (89th):

If the Commission denies a variance and the party who has requested the variance wants to appeal from the denial, is he then in a position of not having on the record, the facts for the denial? It seems to me...well...that's the question, I'm sorry.

THE SPEAKER:

The gentleman from the 11th.

REP. WILLARD (11th):

No. The Commission would still have to, as I interpret it, the Commission would still have to give a reasons for its action. This particular Bill, and I didn't want to comment too much on the Bill, but the intent of the Bill is to require the wording in 75 the exceptional difficulty or unusual hardship, which to me indicates a more restrictive requirement, stating reason rather than the generally accepted reasons for denial.

THE SPEAKER:

The gentleman from the 89th has the floor.

REP. DICE (89th):

Mr. Speaker, through you again, I'm not sure that I quite understand the response. If a variance, which is to be granted, as I understand the Statute, on the basis of unusual hardship and exceptional difficulty, which they all are,

House of Representatives

Thursday, April 17, 1975

76
HMS

is denied, is the reason for the denial to be stated on the record, so that the party who wants to appeal, who lost his variance, didn't get his variance and wants to appeal, is he going to have on the record then, something he can appeal from by the virtue of the Commission's action?

REP. WILLARD (11th):

I would say Yes, but because..it should take a minute to..I'll read the Bill, but the wording that we're adding does not, does not change the requirements that existed prior to adding this particular wording. In other words, this is additional wording, so I assume and if you'll wait a minute, I'll read through the Bill, but we have not changed the existing law regarding stating a decision. In other words, we're adding more than what we had to begin with and I'll read the Bill and see this particular section that you're concerned about.

REP. CLARK (21st):

Mr. Speaker, if I might just comment, briefly I think...

THE SPEAKER:

Well excuse me sir, I believe the gentleman from the 11th still has the floor. Has the gentleman from the 11th concluded his remarks?

REP. WILLARD (11th):

I was answering the question..

THE SPEAKER:

The gentleman from the 11th still has the floor.

REP. WILLARD (11th):

I answered the question so if nobody has any questions..

THE SPEAKER:

In that case, the gentleman from the 89th still has the floor.

REP. DICE (89th):

I'll yield, yes.

THE SPEAKER:

The gentleman from the 21st, Representative Tom Clark.

REP. CLARK (21st):

Just on that point, I might remark Mr. Speaker that I would imagine in the case where a variance is not granted, there would not be exceptional difficulty or unusual hardship. Therefore, it could not be stated.

THE SPEAKER:

The gentleman from the 89th has the floor.

REP. DICE (89th):

I've no further questions at this time. Thank you.

THE SPEAKER:

Remark further on the Amendment? The question then is on its adoption. All those in favor will indicate by saying Aye. Opposed? The Amendment is adopted. The Chair rules it as technical. Will you remark on the Bill as amended? The gentleman from the 11th.

REP. WILLARD (11th):

Mr. Speaker, the Bill will do two things: Six and one is a new section that will require that whenever a zoning board of appeals is hearing a request for a variance, and an appeal from an order of a zoning enforcement officer, that the appeal will have to be determined before the question is raised regarding the variance requested.

That's simply in the case that if you have a case where a zoning enforcement officer has ruled against something, the party who would then go to the board of appeals, which has the authority to either over-rule his decision or grant a variance. And this specifically says that the board will have to consider whether or not to over-rule the zoning enforcement officer before they would consider whether or not to grant the variance requested.

House of Representatives

Thursday, April 17, 1975

78
mms

Now the language in...on appearing in line 71 through 75 goes to say that if the board does grant the variance, that they have to specifically state for the record, the basis on a...on the basis of either an exceptional difficulty or an unusual hardship. It's an attempt to clearly define board action so that people who are appearing before boards will know exactly where they stand.

I think it's a good Bill and I think it should pass.

THE SPEAKER:

Will you remark further? The gentleman from the 20th, Representative Charles Matties.

REP. MATTIES (20th):

Mr. Speaker, a question through you to the proposer, please.

THE SPEAKER:

Please frame your question.

REP. MATTIES (20th):

Doesn't this Bill actually expand the provisions under which variances or ZBA may grant variances?

THE SPEAKER :

Gentleman from the 11th care to respond?

REP. WILLARD (11th):

No, I would respectfully submit that it does the opposite. In other words, it's saying that the...if the board is going to do it, they've got to clearly say why, so that if anybody has any questions about it, that they know on what the basis of the board acted in granting the variance.

THE SPEAKER:

The gentleman from the 20th has the floor.

REP. MATTIES (20th):

Mr. Speaker, the addition of the words exceptional difficulty or

House of Representatives

Thursday, April 17, 1975

79
HRS

unusual hardship appear to expand or expand the latitude that the board has within which to act and again, through you Mr. Speaker, if I may, another question to the proposer?

THE SPEAKER:

Frame your question sir.

REP. MATTIES (20th):

I don't think he's listening.

THE SPEAKER:

The gentleman from the 11th is about to have a question.

REP. WILLARD (11th):

Excuse me I didn't....

REP. MATTIES (20th):

Through you Mr. Speaker, may I have a definition or two, or an example, I should say, or two, of an exceptional difficulty?

THE SPEAKER:

The gentleman from the 11th.

REP. WILLARD (11th):

Comment has been made that maybe I should say get the Bill passed, but...

THE SPEAKER:

Any further response?

REP. WILLARD (11th):

I suppose that an exceptional difficulty would be a case, if you had a septic tank problem and it couldn't be located on a particular part of a lot because of terrain and things like that, that you might have to move your building to another location to accommodate the septic tank. I suppose that that might be deemed an exceptional, exceptional difficulty or an unusual hardship. I'm just trying to give you some...

House of Representatives

Thursday, April 17, 1975

80
MMS

REP. MATTIES (20th):

Thank you. Mr. Speaker, it seems to me that..I do oppose this Bill, I shouldn't say it seems to me, I do oppose the Bill because it does appear that we will be increasing rather than narrowing the latitude of the ZBA and therefore, I oppose the Bill.

THE SPEAKER:

Will you remark further on the Bill? Gentleman fro the 14th, Representative Abe Glassman.

REP. GLASSMAN (14th):

Very briefly, all this Bill really does is to require further documentation of some of the decisions of the zoning board of appeals. This is basically what it is, pure and simple and there's no hidden meaning in it. Thank you very much Mr. Speaker.

THE SPEAKER:

Will you remark further on the Bill? The gentleman from the 19th, Representative Robert Shea.

REP. SHEA (19th):

Mr. Speaker, I believe the zoning board of appeals can act in two instances and that is a variance or special exception. A variance would require a hardship and a special exception, I expect, would require an exceptional difficulty.

THE SPEAKER:

Remark further on the Bill? If not, will the Members please be seated and will the staff come to the well? There will be an immediate roll call vote in the Hall of the House. The House of Representatives will vote by roll immediately.

For what purpose does the gentleman rise?

REP. DORAN (30th):

House of Representatives

Thursday, April 17, 1975

81
mms

May I announce that John B. Alessie of the 122nd and Lawrence Palaia of the 121st are necessarily absent from the Chamber on Legislative business?

THE SPEAKER:

Thank you sir. The Journal will so note.

There will be an immediate roll call vote in the Hall of the House. The House of Representatives will vote by roll immediately. Will Members please be seated and the staff come to the well? The machine will be open. Have all the Members voted? Is your vote properly recorded? The machine is still open. Have all the Members voted? The machine will be closed. The Clerk will take a tally. Clerk please announce the tally.

THE ASSISTANT CLERK:

Total Number voting.....	126
Necessary for Passage.....	64
Those voting Yea.....	125
Those voting Nay.....	1
Those absent and not voting.....	25

THE SPEAKER:

The Bill as amended is passed.

THE CLERK:

Calendar 434 Substitute for Senate Bill 226 AN ACT CONCERNING
PAYMENT OF MEDICAL SERVICE CORPORATIONS FOR SERVICES OF NATUREOPATHIC PHYSICIANS.

THE SPEAKER:

The gentleman from the 51st, Representative Kevin Johnston.

REP. JOHNSTON (51st):

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

THE SPEAKER:

Question is on acceptance and passage in concurrence. Will you remark?

S-107

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1975

VOL. 18
PART 3
1047-1558

Thursday, April 24, 1975

26.

THE PRESIDENT:

roc

Hearing no objection, the matter is placed on the Consent Calendar.

THE CLERK:

This is Cal. 343, File Nos. 190, 346. Favorable report joint standing committee on General Law. Sub. House Bill 5670, AN ACT CONCERNING PROCEDURAL RIGHTS BEFORE A ZONING BOARD OF APPEALS, as amended by House Amendment Schedule A.

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO: (25th)

Mr. President, I move acceptance of the committee's joint favorable report and passage of the bill.

THE PRESIDENT:

Will you remark, senator?

SENATOR CICCARELLO:

Yes. Mr. President, this bill requires the Zoning Board of Appeals to sign the appeal from a decision of a zoning law enforcement official before deciding the application for a variance which is joined with such appeal. It also increases the information to be included in the record of zoning boards of appeal by requiring (1) when a special acceptance or variance is granted, the particular zoning law or regulation in question and (2) when a variance is granted a specific description of the exceptional difficulties or unusual hardship on which the board's decision is based. If there is no objection, I move

Thursday, April 24, 1975

27.

that it be placed on the Consent Calendar.

roc

THE PRESIDENT:

Hearing no objection, the matter is moved to the Consent Calendar.

THE CLERK:

Cal. 344, File 155. Favorable report joint standing committee on General Law. House Bill 7107, AN ACT ALLOWING CLEMENT CORMIER TO APPEAL HIS CLAIM FOR UNEMPLOYMENT COMPENSATION BENEFITS.

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO: (25th)

I move for acceptance of the joint committee's favorable report and passage of the bill.

THE PRESIDENT:

Having so moved, senator, will you remark further?

SENATOR CICCARELLO:

Yes. Mr. President, this bill would provide relief to a handicapped person who through an unavoidable lapse was one day late in filing an appeal to have his unemployment compensation reinstated. Mr. Cormier who is blind, lives alone and is unable to read his mail. Until someone comes to visit him he doesn't even know if there is important mail needing his attention. This man, who is fifty-eight years of age, lost his job and did receive unemployment benefits which were subsequently stopped. It seems to me, Mr. President, that there are extenuating cir-

JOINT
STANDING
COMMITTEE
HEARINGS

GENERAL LAW
PART 1
1 - 413

1975
INDEX

GENERAL LAW

CHAIRMAN WEBBER: We will kick it around. Representative DeMerell.

REPRESENTATIVE JOHN DEMERELL, 35th District: I would like to speak in relation to four bills which I submitted on behalf of the Planning and Zoning Sub-Committee of the Connecticut Bar Association. I think these particular bills clarify in strength some present practices of zoning.

The first one is Bill 5669 which as An Act which would amend Section 8-13(a) to permit the use of a building situated in violation of a zoning regulation. As I understand it, this is to make a new classification for building as a non-conforming use. Rather than a non-conforming use it would be ruled as a non-conforming building and it would be able to be used where it would not be in violation of zoning regulations covering uses of businesses in that area.

SENATOR CICCARELLO: And you say this was submitted by our acting as a representative of the Bar Association?

REPRESENTATIVE DEMERELL: I was approached by a member of the Planning and Zoning Sub-Committee of the Connecticut Bar Association and I am submitting it on behalf of them.

STEVE ROLNICK: We are working with the Planning and Zoning Sub-Committee. That is why we are interested in this. In the last sentence you say you want it to be changed from a non-conforming use to a non-conforming building to be used in any manner which is permitted by the zoning regulations. Does that mean any manner which is permitted within the entire town or within the area?

REPRESENTATIVE DEMERELL: Within the described areas, for instance what type of businesses they would allow in that particular area. Again, I might mention that the full draft of the bill is in the hands of the Clerk and, of course, part of the problem is we had to break this back down into a proposed form so there is some clarification of language in the final draft form.

The next one is Proposed Bill 5670 and this is An Act that Concerns Itself to the Procedural Rights before a Zoning Board of Appeals. Essentially what it does is to request the Board to rule on the actions of the zoning enforcement officer before he moves into making a decision on whether or not he is going to grant a given variance.

The next bill is 5671 and this is an Act Concerning the Recording of Zoning Variances in the Land Records. Again, this is to provide a record that is of access to the public of exactly when a zoning variance was granted and to make sure that there is reference to what regulations were varied.

JOINT
STANDING
COMMITTEE
HEARINGS

GENERAL LAW
PART 2
414 - 818

1975

buildings to see whether they are in violation of the law?

REPRESENTATIVE DE MERRELL: I don't think so Mr. Chairman, and that sense that we are talking about of a three-year period. In my mind if it is a violation of an existing regulation that evidently it is so non-noticeable in terms of maybe set back or what have we, that after a period of three years the people involved with the building and have been using it as such is accepted under neath the zoning plan of the town. That it seems to me at this point that we should continue to allow this building to be used in the use that it is being, in the manner that it is being used. I think three years is certainly an ample time and certainly it seems in my mind that we are being overly hard on the owners of that building if we should suddenly come in and after a period of three years and say this building can no longer be used for the present use because it is in a violation of the zoning lot regulation.

The next is bill 5670, which is AN ACT CONCERNING THE PROCEDURAL RIGHTS FOR ZONING BOARD OF APPEALS. What this bill basically does is it requires the zoning board of appeals to first decide appeals and decisions on zoning enforcement officer before deciding applications in variances. It also provides in section B of the bill where a zoning board of appeals decides to grant a variance. It shall state in its records the reasons for such decisions. State each particular zoning by law or ordinance or regulation which is very in its application. It describes specifically in detail the unusual hardship or practical difficulty as the case may be.

I would also like to address myself to HB. 5673, this bill basically attempts to bring about a distinguishing class between unusual hardship and practical difficulty in the awarding of variances.

I would also like to express my support for SB. 815, which is AN ACT CONCERNING RECORDING OF SPECIAL EXCEPTIONS OR VARIANCES. Again what I believe that this act is attempting to get at is to provide the recording of the land records of any areas or exception that is granted by zoning board of appeals.

REPRESENTATIVE GEJDENSON: I am Sam Gejdenson from the 48th, briefly Mr. Chairman, I have three bills here, one is 816, that Sen. Murphy spoke on earlier, I am not going to repeat as I agree with what he said, basically the problem that exists in Lebanon is that quite a number of families have been placed into situations hardship because of the present situation and I think this bill would remedy that and also I would like to leave with you a letter from a 72 year old lady who is unable to be here because her 102 year old aunt's birthday. Also I would like to talk about two bills bill #100 and 165, which Sen. Murphy also went over earlier and several members from the Community are here on this bill and I won't go into detail but basically Sen. Murphy expressed I will just give the town the opportunity to consolidate its

to answer them then I am. We respectfully request that they will report form the committee on this bill.

JESSIE QUERION: (some testimony lost in changing tapes.) to each property owner. Again I have multiple copies of this

SENATOR CICCARELLO: I am looking at your statement on bill 816 and I must say that it doesn't answer the questions that are being raised in my mind. I would hope that you would submit an additional statement specifically explaining all the words utilized. I am not entirely sure how the three year period operates and this exclusion is fairly clear but the language pertaining to the three year period to me is very ambiguous and I feel it should be explained fully.

RICHARD FITZGERALD: My name is Richard Fitzgerald, I am Council for a member of the Board of the Housatonic Psychiatric Center Inc. Housatonic Psychiatric Center is a non-profit corporation supported by the, this is bill # 5525, this psychiatric center is a non-profit corporation supported by the state of Connecticut which provides for a public mental health clinic.

The Board of the Psychiatric Center is composed of civic minded citizens, volunteers who are unpaid for their services. In the yearsin 1969, annual reports required to be filed with the Secretary of State of Connecticut were not filed through over sight. Members of the Board of the clinic which resulted in the forfeiture of the charter of the clinic. We are asking under section 33-497 of the General Statutes which provides for a period of time in which reinstatement of the charter may be effective by filing certain documents with the Secretary of State that that limitation of time be extended to October 1, 1975, to allow for reinstatement since the period is already passed. Merely to also provide for validation of normal corporative acts during that period of time in which the charter was forfeited.

CHARLES M. TIGHE: I am Charles M. Tighe, I am an attorney and I am a member of the Planning and Zoning Section of the Connecticut Bar Association. I at the request of the section drafted the bills which I would like to speak to here this morning.

They are supported by the section. The bills are HB. 5669, 5670, 5673, and SB. 815. All of these bills I believe will help with the administration of zoning at the local level and help to clarify some of the existing provisions of the law. I would be glad to answer any questions concerning any of these bills. I would like to address myself to one in particular, a few comments about which we had earlier this morning.

This bill concerns, 5669, which amends section 8-13A of the statutes. That section of the statutes provides that if a building violates a side yard line, for a period of three years then the zoning enforcement agent cannot make it tear down the building. One would think that under ordinary circumstances this would be interpreted to mean that not only

pecially when they are dealing with property changes. But if the law requires that the map itself be published in the newspaper, along with the legal notice I certainly feel this is a compromise in lieu of adequate notice to all those people that are involved in the zone change district itself.

THOMAS BYRNE: My name is Attorney Thomas Byrne, I am here on behalf of the Connecticut Federation of Planning and Zoning Agencies.

I have just a few comments the first would be on Committee bill # 100, and Committee Bill # 165. The purpose of both of these bills is fine I think that the language under sub-section B is redundant in some areas. I think the first sentence could be deleted without sacrificing anything. The concept is good I think those who read section of line 74 that says they shall supercede any zoning commission and I think that what you mean to say that perhaps they are going to supercede any zoning board of appeals. Perhaps someone pointed that out and I missed it. The concept of both of those bills is good.

We would oppose Committee Bill # 444, zoning commissions exercise basically a legislative function such as you do we don't believe that legislative action should become law merely by omission to act. Despite the testimony, that we by the gentlemen that was here this morning, the builder in Vernon I don't think this has been a problem throughout the state. I am sure there are builders who can point out instances where they were delayed. But I don't think it is a problem and I think that the remedy that this seeks to impose on zoning commissions is much too severe for the problem that as I see it this bill has been in before, many sessions and it has been uniformly rejected at each session of the General Assembly.

Proposed bill 807, dealing with referendum on zone changes we feel is not needed. It unduly complicates the appeal procedure. If the builder who was here this morning thinks that he had problems now with the 65 day rule, if you adopt this referendum rules he will never get his zone change decided.

Proposed bill 814, dealing with definition of a sub-division we feel is not needed and indeed harmful. I think most commissions now follow a rule of counting split ups of land as of the day sub-division regulations were adopted in their town. Then they try to keep track as best they can generally with the help of the assessors office. This roll over period that was spoken of will really cause a great deal of confusion and I don't think is really necessary.

Commercial sub-divisions and industrial sub-divisions can have a great impact on any community and they certainly should be subject to review by the local planning commission to see that they fit in with the overall development of the town.

Proposed bill 815, requiring recordings special exceptions and variances has some merit I just wonder in what form the notices will take place. Who will prepare them. I would assume a legal description is going to have to be inserted. Probably an admin-

istrative problem, but I think if the Legislature is going to do this, they ought to spell out in guidelines.

SB. 816, dealing with non-conforming uses. I can see perhaps as some merit based on the testimony I heard today. But again, this will place a great burden on the local enforcement officials and we do of course now have provision in our statute where buildings situated of course sub-section 8 where a building is situated for three years without institution of an action to enforce the regulations is deemed non-conforming and I think as Mr. Connolly pointed out before that if you tie this in with proper consideration of septic approvals etc. that it perhaps has some merit.

We don't feel that HB. 5670 is needed dealing with procedural rights before zoning board of appeals. I am not sure what it means anyhow, but requiring a zoning board of appeals to consider legal issues joined with the request for variance just doesn't mean much to me and I think the review procedure which we have now by court or board of appeals have not acted properly is really sufficient.

Proposed bill 5673, perhaps has, is an area where some study should be made. I think the gentlemen who spoke on the bill suggested that we might have different standards for use for variances then we do for set back and side line variances. Perhaps that has some merit and ought to be looked into. I don't know that this bill really does all I have before me is something that looks like a statement of purpose bill that it really doesn't help very much.

REPRESENTATIVE HENDEL: (inaudible)

THOMAS BYRNE: Proposed bill 6161, dealing with sub-division fees I think deserves some consideration by this committee #3. a lot or \$25. for application is inadequate. I think an applicant should be willing to at least pick up the advertising costs and the costs of conducting the hearing. Sometimes you have to bring in a court stenographer to take down the minutes of goes on in the public hearing and that can be pretty expensive and if the applicant feels that he will derive some merit from presenting his application he should at least pick up those costs.

HB. 6375, concerning notification to property owners, I think presents many administrative problems. I don't think anybody objects to the concept of the bill. It probably works ok, in a situation where one property owner, a small number of property owners involved but on a town wide zone change or zone changes involving many properties it would be very difficult to notify every body by registered mail and if the staff of the commission happens to miss one property owner I can see a court over turning the decision of the commission for missing one property owner out of say 500. That is one area where courts have been very strict when the legislature has imposed notification requirements those are very strictly looked at by courts and this would be very difficult I think to handle.