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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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McLACHLAN, J., dissenting. Although I agree with the majority's statement of the facts, I would add the following facts: (1) the lots for which the defendant M & E Construction, Inc. (M & E), sought a variance have been assessed and taxed as separate building lots by the town of North Branford and conveyed and treated as separate lots by previous owners of the subject property since the lots were created in 1968; and (2) the combined area of the three lots is more than 152,000 square feet, with M & E's proposed lot A being more than 72,000 square feet and proposed lot B being more than 79,000 square feet, in a zoning district designated as R-40 that requires a lot size of only 40,000 square feet. In addition, I would emphasize the following facts: (1) the three subject lots are part of a four lot subdivision approved in 1968 so that, at that point in time, a residential dwelling could have been constructed on each of the four lots; and (2) the Connecticut Light and Power Company easement encumbering the subject property was involuntarily taken in 1981 in a condemnation proceeding.

M & E acquired the three lots in July, 2001. As noted in the majority opinion, the 150 foot buildable square regulation was enacted after the subdivision that created the lots was approved in 1968 and does not apply to those legally existing, nonconforming lots. See General Statutes § 8-26a (b). Instead of building a residential dwelling on each of the three lots, as M & E had the right to do, it presented the defendant zoning board of appeals of the town of North Branford (board) with a proposal to combine the three lots into two lots and sought a variance to reduce the buildable square requirement on one of the lots, which requirement was not imposed on the three "grandfathered" lots. M & E proposed to build two houses instead of three houses on 152,000 square feet of land. In granting the variance, the board took into account the fact that the three lots have been assessed and taxed as separate lots since 1968 and its concerns over the enormity of the utility easement.

Given those facts and the deference to be accorded a zoning board's decision, I respectfully disagree with the majority's conclusion that the hardship in this case is merely financial. I would also conclude that the hardship was not self-created and that the board properly could find a change in conditions or circumstances that would permit the granting of the variance request in M & E's second application after its first application was denied in 2001. Accordingly, I would affirm the judgment of the trial court.

I

I respectfully disagree with the majority's conclusion that the hardship proffered by M & E was merely financial in nature and, therefore, insufficient for purposes of obtaining a variance. This is not a situation in which the applicant seeks to build an addition onto an already existing structure or seeks to enhance the value of the property by proposing a new or additional use at variance with current regulations. M & E acquired three approved subdivision lots, taxable as three separate building lots.

By combining the lots, M & E proposed to construct two residential dwellings on two reconfigured lots. The plaintiff, Wanda Vine, an owner of abutting property, argues that M & E is restricted to one residential dwelling on the three combined lots, thereby reducing the use of its property from three residential dwellings to one residential dwelling. The plaintiff claims that such a reduction is merely a financial hardship because M & E cannot use its property to its maximum potential. In actuality, however, as indicated in the majority opinion, M & E has the right to build three houses on three lots, but has presented a proposal to build two houses on two larger lots. Because that is a new proposal and the buildable square regulation is now in place, M & E had to seek a variance because the utility easement makes compliance impossible. Given that scenario, it is difficult to comprehend how the claimed hardship is merely financial when M & E proposes to build less than it is entitled to build.

''[I]t is well established that financial considerations, unless they greatly decrease or destroy the value of the property, do not constitute a cognizable legal hardship that would warrant a variance.'' *Horace* v. *Zoning Board of Appeals*, 85 Conn. App. 162, 171, 855 A.2d 1044 (2004). Virtually any land use restriction has economic consequences. If the hardship results in the deprivation of the reasonable use of the property, however, the hardship is not merely financial in nature. For example, our Supreme Court affirmed the granting of a variance in *Chevron Oil Co.* v. *Zoning Board of Appeals*, 170 Conn. 146, 365 A.2d 387 (1976), even though there was no ''practical confiscation''; (internal quotation marks omitted) id., 152; because a portion of the property could be used for some permitted use without a variance. Nevertheless, the applicant in that case would be deprived of more than 85 percent of the use of that property, greatly diminishing the value of the land. Id.

Similarly, we have concluded that it is appropriate to grant a variance when a zoning regulation prevented the reasonable use of a particular property for its intended purpose. In *Giarrantano* v. *Zoning Board of Appeals*, 60 Conn. App. 446, 447–48, 760 A.2d 132 (2000), the applicant's property was located in a commercial zone, but had a preexisting nonconforming residence on the lot. The zoning board of appeals granted a variance

request to reduce setback and buffer requirements to permit the construction of a hotel on the property. Id. Reversing the trial court's decision, we determined that the zoning board of appeals was justified in finding that the applicant would suffer unusual hardship that would deprive him of the reasonable commercial use of his property if the regulations were strictly applied. Id., 454–55.

The two cases relied on by the majority in concluding that M & E's hardship is merely financial are distinguishable from the present case. In *Grillo* v. *Zoning Board of Appeals*, 206 Conn. 362, 537 A.2d 1030 (1988), and *Norwood* v. *Zoning Board of Appeals*, 62 Conn. App. 528, 772 A.2d 624 (2001), the applicants stated their hardships in terms of financial deprivation. The vacant lot in *Grillo* had a value of $26,000 if a house could be constructed on it and a value of $8000 if it could be used only as a side yard for the existing house. *Grillo* v. *Zoning Board of Appeals*, supra, 366. The vacant lot was *not* an approved subdivision lot and, as noted in the court's conclusion, there was another section of the zoning regulations that might have permitted the issuance of a special exception for the vacant lot if the applicant met certain requirements. In *Norwood*, one of the applicants claimed that her hardship would be her lost profit if she was denied the opportunity to sell her lot as a buildable lot. *Norwood* v. *Zoning Board of Appeals*, supra, 534. The other applicant claimed overpayment of property taxes as her hardship because the town taxed her lot as a buildable lot although it was a nonconforming, nonbuildable lot. Id., 535–36. The claimed hardships were couched solely in terms of financial losses.

In the present case, M & E has three approved subdivision lots. Those lots, since their creation, have been taxed and treated as three separate building lots. The easement, making compliance with the regulations impossible, is a condition unique to the property. M & E's application for a variance states that its claimed hardship is the eighty foot utility easement, taken in an involuntary condemnation proceeding, which makes it impossible for the applicant to meet the 150 foot buildable square requirement. In *Grillo* and *Norwood*, the hardships claimed were solely economic. Here, the claimed hardship is the inability to use the land for its approved purpose.

Neither M & E nor its predecessors in title have taken any actions to create the problem preventing compliance with the current regulations. If the regulations were applied strictly to the property at issue, M & E would be deprived of the reasonable and legitimately expected use of its property. Accordingly, I would conclude that the board was justified in finding that M & E proved the requisite hardship necessary for its requested variance.

II

M & E purchased the three approved subdivision lots in July, 2001, after the Connecticut Light and Power Company acquired its aboveground easement through a condemnation proceeding against the former property owner. The ''purchase with knowledge'' rule, which would preclude M & E from obtaining a variance, does not apply under those circumstances.

''A person who buys a nonconforming lot or who acquires property with a nonconforming use caused by a change in the zoning regulations has the same right to obtain a variance as the seller of the property, and is not barred from obtaining a variance by the purchase with knowledge rule. However, the purchase with knowledge rule would bar the buyer of an *illegal* lot from obtaining a variance where he purchased the property with knowledge of the problem. For example, the owner was not entitled to a variance when the lot was improperly divided by a predecessor in title. There is a fine line between these two situations; the cases make a distinction between purchasing a nonconforming lot (or one with a nonconforming use) and purchasing a lot which is *illegal*, which has a problem due to self-created hardship, or applying for a use not allowed in the zone.'' (Emphasis added.) R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 9.4, pp. 190–91.

That distinction was made very clear in a recent decision of this court. See *Sydoriak* v. *Zoning Board of Appeals*, 90 Conn. App. 649, 879 A.2d 494 (2005). ''The defendants rely on our Supreme Court's decision in *Abel* v. *Zoning Board of Appeals*, [172 Conn. 286, 374 A.2d 227 (1977)], in arguing that, because the plaintiff purchased the lot with the knowledge that it was nonconforming under the zoning regulations, his hardship was self-created. *Abel* and its progeny, however, make clear that the knowledge required for self-created hardship is knowledge that the property *never was intended* for the use the plaintiff seeks. See, e.g., id., 287 (lot reserved in subdivision plan as park, not as building lot); *Kalimian* v. *Zoning Board of Appeals*, [65 Conn. App. 628, 783 A.2d 506] (plaintiff could not obtain variance for manufacturing business for lot in residential use district) [cert. denied, 258 Conn. 936, 785 A.2d 231 (2001)]; *Spencer* v. *Zoning Board of Appeals*, 15 Conn. App. 387, 544 A.2d 676 (1988) (plaintiff could not obtain variance from minimum square footage requirement where plaintiff sought to subdivide lot).'' (Emphasis in original.) *Sydoriak* v. *Zoning Board of Appeals*, supra, 660–61 n.10.

In the present case, the three lots were approved as separate legal building lots in 1968 and have been taxed separately as such since that time. The subdivision approval conferred vested rights on the property, as

set forth in § 8-26a. The subject utility easement, acquired after subdivision approval, was taken in a condemnation proceeding. The condemnation did not make the lots illegal, it just made them nonconforming as to M & E's new proposal. Through circumstances beyond the control of M & E, compliance with the current regulations is not possible. This is not a self-created hardship, and the ''purchase with knowledge'' rule does not apply.

III

M & E submitted variance applications for the subject property in 2001 and 2002. Although the board denied the first variance request, it found that certain considerations presented in connection with the second request permitted the granting of the variance. The trial court concluded that there was sufficient evidence in the record to demonstrate that the board did not act unreasonably or illogically by reversing its prior denial of the variance. I agree with the trial court.

When a party files successive applications for the same property, a court must first determine whether the two applications seek the same relief. The zoning board determines that question in the first instance, and its decision will not be disturbed unless it has abused its discretion. *Fiorilla* v. *Zoning Board of Appeals*, 144 Conn. 275, 279, 129 A.2d 619 (1957). If the applications are substantially similar, ''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).

The two variance requests were submitted by the same owner for the same property, seeking essentially the same relief. The board found, however, that the second variance request could be approved because of the following considerations: (1) the board learned for the first time that the three lots owned by M & E were taxed independently and sold as separate entities; (2) the board determined for the first time that the minimum square lot requirements could never be satisfied for the three approved subdivision lots either as two reconfigured lots or as one combined lot because of the magnitude and location of the utility easement; (3) the proposed property line dividing proposed lots A and B was moved to accommodate the proposed driveway; and (4) the board was made aware of the enormity of the easement, as set forth in a memorandum by the town planner. ''For an appellate court, the only question is whether the trial court's finding as to the zoning board's decision is clearly erroneous.'' Id., 646.

The board determined that those factors, previously unknown to it, materially affected the merits of the

matter so as to permit approval of the second variance application, and the trial court found that this conclusion was not unreasonable or illogical. The argument has been made that, except for the change in the boundary line, those were facts in existence at the time of the first application. In essence, the plaintiff claims that those were not changes that occurred between the time of the first application and the submission of the second application and, therefore, cannot be a change in conditions sufficient to warrant a reversal in the board's decision. Case law does not support that claim.[1]

The board reasonably could have concluded that ''other considerations have intervened which materially affect the merits of the matter decided.'' (Internal quotation marks omitted.) Id., 645–46. The board simply did not have the necessary information before it at the time of the first application. We previously have sanctioned a board's approval when the information submitted in connection with a second application was tax information, which could have been presented at the time of the first application. In *Laurel Beach Assn.*, a subsequent applicant submitted a variance application that was allegedly substantially the same as one submitted by a prior applicant. The second applicant submitted to the board various photographs of the subject lots, subdivision maps, a certificate of title with related documentation showing the property's chain of title and tax bills showing that both lots were taxed separately by the city. Id., 647. ''[T]hat information was not presented to the zoning board when [the prior applicant] applied for a permit in 1988. As a result, the zoning board could have properly granted the permit in 1998 even if it did view the relief requested as substantially similar.'' Id., 647–48.

Zoning boards typically are comprised of laypeople making the best decisions they can on the basis of the information provided. People coming before the local boards often are the owners or applicants themselves, without the benefit of legal representation. This court cannot expect them to adhere to the same standards required of attorneys in legal matters before the courts, where any arguments that can be raised must be raised at that time or will be deemed to be abandoned. The board in this case simply did not have important information at the time it made its decision on the first application. It subsequently was presented with a much more accurate depiction of the situation surrounding the three approved subdivision lots and the scope of the aboveground utility easement. The plaintiff's claim that local land use agencies can only consider events that occur in time between the first and second applications in considering whether to reverse a prior decision simply is not supported by statutory or case law. See id., 645–46.

I would conclude that (1) the claimed hardship was

not merely financial in nature, (2) M & E's hardship was not self-created, and the ''purchase with knowledge'' rule does not apply under the circumstances at issue, and (3) the board's reversal of its previous decision was not unreasonable or illogical. For those reasons, I would affirm the judgment of the trial court. Accordingly, I respectfully dissent.

[1] In *Bradley* v. *Inland Wetlands Agency*, 28 Conn. App. 48, 49, 609 A.2d 1043 (1992), the inland wetlands agency granted the plaintiff's application for a wetlands permit to construct a single-family residence. The permit expired because the plaintiff did not initiate activity within one year, as required by the regulations. Id. He reapplied and claimed that the inland wetlands agency should approve the subsequent application because nothing had changed concerning the property since the approval of the original application. Id., 49–50. The inland wetlands agency denied the subsequent application because it had become aware of severe problems downstream from the plaintiff's property that it was not aware of when the original application was approved. Id., 50. The court concluded that ''the [inland wetlands agency] acted properly in considering factors that came to light between the . . . approval and the subsequent . . . [denial] . . . .'' Id., 51–52.