ZONING BOARD OF APPEALS
TOWN OF MORRIS
3 EAST STREET, P.O. BOX 66
MORRIS CT 06763

Received 2:25 PM
January 12, 2022
Susan J. Jeanfavre
Assistant Town Clerk

Zoning Board of Appeals Morris CT

Special Meeting Agenda

Date January 14, 2022

Time 6:30 PM

Hybrid Meeting

Call to Order

Roll Call of Members

Old Business – acceptance of Minutes

Election of officers

Discussion: Garrity vs ZBA Appeal

Vote on Appeal request and schedule public hearing

Adjourn

Topic: Zoning Board of Appeals

Time: Jan 14, 2022 06:30 PM Eastern Time (US and Canada)

Join Zoom Meeting

https://us02web.zoom.us/j/89463253778?pwd=ejlnSXI4OHZYV0cwVk1KWWwwMW1wQT09

Meeting ID: 894 6325 3778

Passcode: 344432

Received 9:00 AM
April 30, 2021
Susan J. Jeanfavre
Assistant Town Clerk

Minutes

Special Meeting Zoning Board of Appeals
April 28, 2021, 6:30 PM
Lower-Level Meeting Room and Zoom
Morris Community Hall
3 East Street
Morris, CT 06762

Attendees:

In Person: Allen Bernardini, Chair, Nancy Skilton, Alternate
Via Zoom: Giles Giovanazzi, Zoning Enforcement Officer, J Adili

Meeting called to order at 6:41 PM by Chair Bernardini.

Motion by G. Giovanazzi to accept minutes of February 24, 2021 meeting, Second N. Skilton. Approved.

Discussion of request for variance at 84 West Street, Morris, CT.

Motion by N. Skilton to not accept the application for a variance at 84 West Street without prejudice and to return the application fee. Second G. Giovanazzi. Approved

Motion by N. Skilton to adjourn at 6:52 PM. Second G. Giovanazzi. Approved

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December 22, 2021

Confidential – Pending Litigation

Allen Bernardini, Chairman
Morris Zoning Board of Appeals
Town Hall
3 East Street
Morris CT 06763

Re: Garrity v. Morris Zoning Board of Appeals
LLI-CV-18-6020317

Dear Mr. Bernardini:

I have enclosed a copy of the court's decision to sustain the appeal and remand the matter back to this board for a public hearing. The hearing needs to commence within 65 days of the court's decision. Thus, it should be scheduled to start no later than February 14, 2022.

I recommend that the Board move forward and hold the public hearing rather than appeal this decision. While I disagree with the court's legal basis for finding that this Board was free to ignore the time requirements imposed by Connecticut General Statute Sec. 8-7d, I do find her reasoning that equity and due process require the board to hold a hearing well supported. An appeal to the State Appellate Court is not likely to be successful.

A discussion was held with Attorney Caulkins, who represents Mr. Geremia. His client is not going to appeal the decision and instead requests that the Board schedule a public hearing for January or February. The Board should place this matter on the agenda for a regular or special meeting under old business. At this meeting, it can schedule the public hearing and mail notice of the hearing to Ms. Garrity and Mr. Geremia. A notice of the hearing needs to be published as well.

Please contact me with any questions.

Very truly yours,

Steven E. Byrne

Clients/MorrisZBA-Garrity-ltrs

DOCKET NO. CV-18-6020317-S		SUPERIOR COURT
BRIDGET GARRITY		J. D. OF LITCHFIELD
v.	:	AT TORRINGTON
ZONING BOARD OF APPEALS OF	:	
TOWN OF MORRIS, ET AL.	:	DECEMBER 10, 2021

MEMORANDUM OF DECISION

I

INTRODUCTION

The plaintiff Bridget Garrity, appeals to this court from a decision of the Zoning Board of Appeals of the Town of Morris rejecting her appeal from the decisions of the Morris Zoning Enforcement Officer. The question before the court is whether the defendant Board's decision to reject the plaintiff's appeal and close the public hearing due to the expiration of the statutory time period to hold a public hearing was correct. For all of the following reasons, the court sustains the plaintiff's appeal.

II

PROCEDURAL HISTORY & FACTS

The plaintiff's appeal filed on November 14, 2018, alleges, and the record reveals, the following facts. The plaintiff, Bridget Garrity, is the owner of real property located at 160 Island Trail on Deer Island in Morris, Connecticut. The defendant David M. Geremia owns real property located at 158 Island Trail on Deer Island in Morris, Connecticut. The defendant Zoning Board of Appeals (Board) is the town of Morris' municipal agency that handles appeals from actions of the Zoning Enforcement Officer (ZEO).

AC 12/10/21
- JDNO sent
- Copy emailed to ROJD

Prior to November 3, 2017, Geremia applied to the ZEO seeking a zoning permit to construct buildings, as well as appurtenant and accessory structures, on his property. The ZEO granted and approved Geremia's permit application. On or about November 3, 2017, the plaintiff appealed the ZEO's grant of Geremia's application to the Board. In her appeal, the plaintiff asserted that Geremia's permit should not have been granted because such grant violated the Morris Zoning Regulations. Specifically, the plaintiff contended that granting Geremia's permit violated §§ 1, 2, 7, 26, and 10 of the Morris Zoning Regulations. After the plaintiff filed her appeal, the Board accepted it at a meeting, discussed it, and scheduled a public hearing for December, 20, 2017. The December public hearing was continued until February 6, 2018, because the plaintiff's counsel underwent heart surgery shortly before the scheduled hearing and was unable to appear. A few days before February 6, 2018, the defendant Board continued the scheduled hearing to a future date to be determined because the Board was unable to secure a quorum for the February 6, 2018 date.

At a meeting on May 2, 2018, by a unanimous vote, the Board closed the public hearing on the plaintiff's appeal. On June 26, 2018, the Board unanimously voted to reject the plaintiff's appeal without prejudice and thereafter caused notice of its rejection to be published in the Waterbury Republican-American newspaper on September 19, 2018. The plaintiff alleges that the Board never held a proper hearing on her appeal and that she was entitled to such under the pertinent zoning statutes.

The plaintiff further alleges that the defendant Board, in denying her appeal, acted illegally, arbitrarily, and in abuse of its discretion insofar as it: failed to apply the standards set forth in the Morris Zoning Regulations and the General Statutes; failed to require the ZEO to apply, adhere to, and enforce the standards set forth in the Morris Zoning Regulations and

General Statutes in granting Geremia's application; failed to properly review information presented to it relevant to the plaintiff's appeal; failed to sustain the plaintiff's appeal from the actions of the ZEO and essentially ratified the ZEO's failure to adhere to the Morris Zoning Regulations; failed to provide any legitimate basis or reasons for its rejection of the plaintiff's appeal; and failed to respect and enforce the Morris Zoning Regulations and the General Statutes by not holding a public hearing on the plaintiff's appeal.

The return of record was completed on May 21, 2021. (Nos. 104, 105, 106, 107, 108, 109, 110, 111, 125, and 126.) Record items 1 through 18 were filed on March 8, 2019, while an amended return of record was filed on May 21, 2021, along with record items 19, 20, and 21. The plaintiff submitted her brief on April 30, 2021. (No. 124.) The Board submitted its brief on May 28, 2021. (No. 127.) The defendant Geremia submitted his brief with accompanying exhibits on June 3, 2021. (No. 128.) The plaintiff submitted her reply to the defendants' briefs on June 25, 2021. (No. 130.) The court heard oral argument on the present appeal, by remote means, on September 23, 2021. At the remote hearing, the parties agreed that the plaintiff's complaint filed with the court was missing a page that was in the version delivered to the parties. Accordingly, on October 13, 2021, the plaintiff filed an amended complaint with the court.

III

DISCUSSION

The plaintiff argues that the Board never conducted a public hearing on the substance of her appeal of the defendant Geremia's permit approval. Specifically, the plaintiff contends that a public hearing is mandatory under General Statutes §§ 8-6 and 8-7 and the Board's failure to hold such a required hearing must be corrected.

The Board, conversely, argues that the maximum amount of time that a public hearing can stay open under General Statutes § 8-7d is 35 days along with a maximum extension of 65 days. The maximum time for the public hearing to stay open, accordingly, expired on or about March 30, 2018. The Board argues that the time limits in § 8-7d are mandatory and the Board is without authority to act outside of them. The Board also contends that there is no evidence in the record to support the appeal by the plaintiff and that the evidence also shows that the Board only closed the hearing when the statutory time limit expired. Further, the Board contends that the plaintiff abandoned all issues raised in her appeal other than the public hearing issue as she did not address them in her brief.

The defendant Geremia, in addition to adopting the arguments of the Board, argues that the court must turn to equity in addressing the plaintiff's appeal because Geremia, an innocent party, will be harmed if the court grants the plaintiff's requested relief. Specifically, Geremia contends that he is innocent of any wrongdoing in this action and bears no responsibility for any harm the plaintiff may have suffered by the Board's failure to hold the public hearing. Rather, Geremia will be harmed if this court requires the Board to hold a new hearing because the statutorily mandated timeframe will have been extended for more than three years at that point. Indeed, Geremia contends that the court must turn to equity and that since the plaintiff was negligent in failing to diligently pursue her appeal, she, rather than Geremia, should bear the burden of the Board's failure to hold a public hearing.

The court addresses each of these arguments in turn.

A. Abandoned Issues

The court first addresses the Board's argument that the plaintiff abandoned the issues not addressed in her brief filed on April 30, 2021. Specifically, the Board argues that the plaintiff only has addressed substantively the issue of whether the Board's decision to close the public hearing and reject the plaintiff's appeal is supported by substantial evidence in the record. Indeed, the Board notes that the other issues raised in the plaintiff's appeal to this court have not been briefed at all.

"It is well settled that [courts] are not required to review claims that are inadequately briefed. . . . [The Appellate Court] consistently [has] held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs." (Internal quotation marks omitted.) *Clelford* v. *Bristol*, 150 Conn. App. 229, 233, 90 A.3d 998 (2014).

Accordingly, as the only issue addressed in the plaintiff's brief concerns the Board's decision to close the public hearing, the additional issues raised in the plaintiff's appeal are considered abandoned. The court, therefore, only reviews the public hearing issue.

B. Standard of Review

"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 credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [board]. . . . 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. . . . If the trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning [board's] stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the [board]. . . . The [board's] decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given." (Footnote omitted; internal quotation marks omitted.) *Woodbury Donuts, LLC* v. *Zoning Board of Appeals*, 139 Conn. App. 748, 759–60, 57 A.3d 810 (2012).

"As our Supreme Court has explained, [a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, 129 Conn. App. 275, 286, 19 A.3d 715 (2011). "The question of whether a particular statute . . . applies to a given state of facts is a question of statutory interpretation, which . . . ordinarily presents a question of law." (Citation omitted; internal quotation marks omitted.) *Zoning Board of Appeals* v. *Freedom of Information Commission*, 66 Conn. App. 279, 283, 784 A.2d 383 (2001). Since "this appeal presents a question of law . . . [this court's] review is plenary." *Reardon* v. *Zoning Board of Appeals*, 311 Conn. 356, 364, 87 A.3d 1070 (2014).

C. Aggrievement

"[P]leading and proof of aggrievement are prerequisites to the trial court's jurisdiction over the subject matter of a plaintiff's appeal. . . . [I]n order to have standing to bring an

administrative appeal, a person must be aggrieved. . . . Two broad yet distinct categories of aggrievement exist, classical and statutory." (Internal quotation marks omitted.) *JZ, Inc., Dunkin Donuts* v. *Planning & Zoning Commission*, 119 Conn. App. 243, 246, 987 A.2d 1072, cert. denied, 296 Conn. 905, 992 A.2d 329 (2010). "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Lucas* v. *Zoning Commission*, 130 Conn. App. 587, 590, 23 A.3d 1261 (2011).

General Statutes § 8-8 (a) provides that an "aggrieved person includes any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." As noted at the September 23, 2021 remote hearing on this appeal, the parties have stipulated that the plaintiff is an abutting property owner and that her property is within 100 feet of the defendant Geremia's property. Accordingly, as an abutting property owner, the plaintiff is statutorily aggrieved for the purposes of her appeal.

D. Hearing Requirements

As previously noted, the plaintiff argues that the Board erred in never conducting a public hearing on the substance of her appeal as it was required to do pursuant to the mandatory requirements of §§ 8-6 and 8-7. The Board argues, in turn, that the time limits imposed by § 8-7d (a) are mandatory and, accordingly, the maximum amount of time that the hearing was permitted to remain open was 100 days (35 days with 65 days of extension time).

General Statutes § 8-7 provides in pertinent part: "An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any

municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. . . . The board shall hold a public hearing on such appeal in accordance with the provisions of section 8-7d."

Relatedly, General Statutes § 8-7d (a) provides that "[i]n all matters wherein a formal . . . appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter . . . and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter . . . . The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal."

In the present action, the plaintiff was not provided with an opportunity to bring forward witnesses or produce relevant evidence as to her appeal to the Board. Rather, the Board closed the plaintiff's hearing because the statutory time limit had expired. Indeed, by the plain language

of § 8-7d (a), it does appear that the timeframe under which the Board was to hold a hearing expired on March 30, 2018. See ROR, Item 8. The plaintiff's appeal was first considered at the Board's special meeting on November 21, 2017, and at that meeting, the Board discussed that it would hold a public hearing on December 20, 2017. ROR, Item 6. According to the meeting minutes of the December 20, 2017 special public hearing, the plaintiff requested a continuance of the hearing because her counsel was unavailable on that date due to a medical issue. ROR, Item 7. The parties agreed at the December 20, 2017 meeting to continue the public hearing until February 6, 2018, when the plaintiff's counsel could be present. Id. The plaintiff consented to holding the hearing open beyond the typical 35-day period established in § 8-7d (a). ROR, Item 12.

Nevertheless, the February 6, 2018 public hearing did not go forward due to a lack of quorum. See ROR, Item 10. The plaintiff, in her position statement, notes that on February 1, 2018, she received an e-mail from the chair of the Board informing her that there would be no quorum for the February 6, 2018 meeting and that, therefore, the hearing could not be held on that date. ROR, Item 13. At that time both the plaintiff and the defendant Geremia agreed to a continuance but the hearing was never rescheduled. Id. Accordingly, the Board is correct in alleging that the statutory 100-day timeframe expired on or about March 30, 2018. The question remaining is whether the timeframe contained in § 8-7d (a) is mandatory or directory and, accordingly, whether the Board was correct in closing the plaintiff's appeal without holding a public hearing when that time period ran.

"The principles that govern statutory construction are well established. When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the

statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *State* v. *Rodriguez-Roman*, 297 Conn. 66, 74–75, 3 A.3d 783 (2010).

"The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory. If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially where the requirement is stated in affirmative terms unaccompanied by negative words. . . . Such a statutory provision is one which prescribes what shall be done but does not invalidate action upon a failure to comply. . . . A reliable guide in determining whether a statutory provision is directory or mandatory is whether the provision is accompanied by language that expressly invalidates any action taken after noncompliance with the provision." (Citation omitted; internal quotation marks omitted.) *Katz* v. *Commissioner of Revenue Services*, 234 Conn. 614, 617, 662 A.2d 762 (1995). Further, some planning and zoning statutes containing

mandatory time limits provide that failure to act within the prescribed time results in automatic approval. See, e.g., General Statutes § 8-26 (d) ("failure of the commission to act . . . shall be considered as an approval, and a certificate to that effect shall be issued by the commission on demand"); General Statutes § 8-8 (c) ("where the approval of a planning commission must be inferred because of the failure of the commission to act on an application, any aggrieved person may appeal under this section").

A review of § 8-7d (a) reveals that there is no language contained within that statute invalidating actions taken outside of the 100-day timeframe by which the Board is to hold a hearing. Indeed, § 8-7d (a) prescribes the timeframe for hearings but does not invalidate hearings held outside of that time frame or automatically approve appeals not given a hearing within the time provided in that statute.

Our Supreme Court considered whether the automatic approval doctrine applies to a Zoning Board of Appeals' failure to hold a hearing under § 8-7d (a) in *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, 225 Conn. 432, 436, 623 A.2d 1007 (1993). In that case, the defendant board did not hold a hearing on the plaintiffs' appeal within sixty-five days after its receipt of their application. Id., 437. The Appellate Court and Superior Court in that case opined that the time requirements imposed by § 8-7d (a) could only be fulfilled by commencing a public hearing within sixty-five days and the failure of the defendant board to do so resulted in an automatic approval of the plaintiffs' site plan application. Id.; see also *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, 27 Conn. App. 412, 606 A.2d 725 (1992), rev'd, 225 Conn. 432, 436, 623 A.2d 1007 (1993). The Supreme Court, on appeal, concluded "that a zoning board of appeals is not subject to the automatic approval doctrine

because it fails to hold a public hearing within the time limits contained in § 8-7d (a)." *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 446.

Relatedly, in *Donohue* v. *Zoning Board of Appeals*, 155 Conn. 550, 235 A.2d 643 (1967), the Supreme Court considered whether the provision in General Statutes § 8-7, providing that the Zoning Board of Appeals shall decide an appeal within sixty days after a hearing, was directory or mandatory. In *Donahue*, the Supreme Court opined that the subject provision of § 8-7 was, indeed, directory. Id., 554. Specifically, the court stated that "[t]he statute contains nothing which expressly invalidates a belated decision or which inferentially makes compliance therewith a condition precedent. The provision is not of the essence of the thing to be accomplished." Id.

The defendant Geremia contends that the time limitations set forth in § 8-7d (a) are mandatory and cites two cases to support that proposition, *Vartuli* v. *Sotire*, 192 Conn. 353, 364, 472 A.2d 336 (1984), overruled by *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 446; and *Frito-Lay, Inc.* v. *Planning & Zoning Commission*, 206 Conn. 554, 563, 538 A.2d 1039 (1988). Nevertheless, both *Vartuli* and *Frito-Lay* are distinguishable in the context of the present appeal.

In *Vartuli*, our Supreme Court held that the sixty-five-day timeframe encompassed by the Coastal Management Act and § 8-7d (b) was mandatory and that, upon failure of the zoning board to act, the running of that time period resulted in automatic approval of the plaintiffs' application. *Vartuli* v. *Sotire*, supra, 192 Conn. 353. Importantly, *Vartuli* concerned a site plan under subsection (b) of § 8-7d rather than subsection (a) which is applicable in the present appeal. *Vartuli* v. *Sotire*, supra. These two subsections are distinguishable as subsection (a) of § 8-7d involves cases where a hearing is required while subsection (b) does not.

Further, *Vartuli* was overruled by the Supreme Court's opinion in *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 446. In *Leo Fedus & Sons* the Supreme Court overruled *Vartuli* stating that "[z]oning boards of appeals do not perform the same functions as zoning commissions. Zoning boards of appeals do not adjudicate initial land use applications, but review those already acted upon by a municipality's zoning commission or enforcement officer. . . . The board's appellate function is not advanced by the substitution of an automatic approval for a decision of an appeal on its merits." *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 445. Importantly, *Vartuli* involved a zoning board that hears initial zoning and land use applications akin to a zoning commission—not a zoning board of appeals as in the present matter. *Vartuli* v. *Sotire*, supra, 192 Conn. 353.

In *Vartuli*, the court distinguished the facts of the case from those in *Donohue* v. *Zoning Board of Appeals*, supra, 155 Conn. 550. Specifically, the court noted that "[t]he issue of continued appellate jurisdiction is of course not identical with the issue of timely response to initial land use applications." *Vartuli* v. *Sotire*, supra, 192 Conn. 361. The present matter before the court is, importantly, more akin to the situation presented in *Donohue* than it is to the facts of *Vartuli* because the plaintiff's underlying appeal to the defendant Board involved continued appellate jurisdiction and the Board's ability to rule on an appeal outside of the statutory timeframe. The underlying matter before the defendant Board did not involve the Board's timely response to an initial land use application as in *Vartuli*.

Relatedly, in *Frito-Lay, Inc.* v. *Planning & Zoning Commission*, supra, 206 Conn. 562, the court considered whether an application under § 8-7d (a) must be granted as a matter of law for a zoning commission's "failure to adhere to the mandatory time limits set out in § 8-7d (a)." In *Frito-Lay, Inc.*, the defendant commission, in effect, held several public hearings on the

plaintiffs' application after the statutory time period had run and after the commission had officially closed the public hearing. Id., 567–68. The Supreme Court opined that "there is no dispute at all that the commission properly advertised and held a public hearing . . . on January 14, 1985, and that it was formally closed on that date. At that time, the hearing requirement imposed by statute and the commendable policy of holding a public hearing for providing a public forum for citizen input had been satisfied. The commission, however, went further and held additional hearings after January 14, 1985. We do not read this statutory departure by the commission as requiring automatic approval as that does not present the need that this applicant, unlike those relying upon the sixty-five day limitation, know with certainty that a definite course of statutory action has been taken by a commission, setting in motion clear avenues of appeal. . . . In addition, we do not believe that the legislature intended automatic approval of the scenario presented to us. Given this view, we have determined that because the commission did act illegally, we should go no further than to sustain Frito-Lay's appeal and remand this entire matter to the commission for a new hearing in accordance with law." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 574–75.

In the present case, the plaintiff's entire appeal to this court rests on the very fact that the Board *never* held a hearing on her appeal as opposed to the multiple hearings held in *Frito-Lay, Inc.* Additionally, unlike in *Frito-Lay,* the issue in the present matter is not whether the court could have heard public comments after the hearing was closed on the plaintiff's appeal but whether the defendant Board could have kept the hearing open beyond the statutory timeframe in order for the plaintiff to be heard on her appeal.

The Appellate Court's decision in *Carr* v. *Woolwich*, 7 Conn. App. 684, 510 A.2d 1358, cert. denied, 201 Conn. 804, 513 A.2d 698 (1986), overruled by *Leo Fedus & Sons Construction*

Co. v. *Zoning Board of Appeals*, supra, 225 Conn. 445, as referenced in *Frito-Lay, Inc.* v. *Planning & Zoning Commission*, supra, 206 Conn. 554, is also distinguishable from the present situation. In *Carr*, the Appellate Court concluded that if "§ 8-7d (b) is mandatory because of the clause providing for the applicant's consent to an extension of the sixty-five day time period, then . . . § 8-7d (a) is equally mandatory." *Carr* v. *Woolwich*, supra, 7 Conn. App. 695. Nevertheless, *Carr* was overruled in part by *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 446 n.7. Indeed, the *Leo Fedus & Sons* court noted that "[a]lthough the Appellate Court in [*Carr*] concluded that General Statutes § 8-7d (a) did not apply to the facts of that case, and its conclusion was therefore dicta, it stated that § 8-7d (a), like General Statutes § 8-7d (b), mandates the automatic approval of an application by a zoning commission that failed to act in a timely manner." *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 438 n.5. The *Leo Fedus & Sons* court went on to opine that failure to comply with the time limits in § 8-7d (a) does not result in automatic approval, therefore overruling *Carr*. Id., 446.

Further, in *Leo Fedus & Sons*, the Supreme Court specifically considered whether § 8-7d (a) is mandatory due to the presence of the consent language in that statute. The *Leo Fedus & Sons* court stated that "applicable tenets of statutory construction counsel us to ascribe significance to the absence, in § 8-7d (a), of the explicit provisions for automatic approval found in §§ 8-3 (g) and 8-26." *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 441. "Because §§ 8-3 (g) and 8-26 expressly provide for the automatic approval of applications when a *zoning commission* or *planning commission* do not act within prescribed time periods, it can be inferred that had the legislature intended that the failure of a zoning board of appeals to hold a hearing within sixty-five days results in automatic approval, the legislature

would have so provided. . . . Moreover, if a mandate for automatic approval is to be inferred from the consent language in § 8-7d (a), that construction would render the specific automatic approval language in §§ 8-3 (g) and 8-26 mere surplusage and such an interpretation has been proscribed by this court." (Citation omitted; emphasis added; internal quotation marks omitted.) *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 442.

Additionally, judges of the Superior Court have found that the time limitations provided for in § 8-7d (a) are directory rather than mandatory. See *Wise* v. *Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-00-0802318-S (February 11, 2004, *Beach, J.*) (36 Conn. L. Rptr. 511) ("it is plain from a reading of the language of § 8-7d that the purpose is to provide for the orderly flow of business and is not apparently intended to affect substantive rights"); *Housatonic Corporate Centre Associates Ltd. Partnership* v. *Planning & Zoning Board*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-88-025621-S (May 31, 1990, *Fuller, J.*) (1 Conn. L. Rptr. 685) ("[c]onsideration of other statutory provisions and the apparent purpose for the statutory time limits for holding public hearings on and deciding zoning applications also indicates that the requirements in section 8-3 (c) and 8-7d (a) are directory only").

Further, the defendants' view of § 8-7d (a) as mandatory creates an absurd result. Indeed, the Board's contention that it was *required* to close the public hearing on the plaintiff's appeal without holding a hearing goes against the entire purpose of the statute. Indeed, § 8-7 (a) applies in situations where a hearing is *required*. Construing subsection (a) as mandating that a board close the hearing because it cannot hold such within the time limitations of the statute although a hearing is required on an appeal, leads to an absurd result and does not effectuate the purpose of holding the required hearing or the general nature of appeals under § 8-7. As seen in the present

case, the plaintiff was never afforded a hearing, due to various circumstances beyond the parties' control. Holding now that a hearing, as a matter of law, can never be held on the plaintiff's appeal is unworkable in the context of § 8-7d and its related statutes. "[I]t is axiomatic that those who promulgate statutes . . . do not intend to promulgate statutes . . . that lead to absurd consequences or bizarre results. . . . Consequently, [i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended . . . and, further, if there are two [asserted] interpretations of a statute, we will adopt the . . . reasonable construction over [the] one that is unreasonable." (Citations omitted; internal quotation marks omitted.) *State* v. *Courchesne*, 296 Conn. 622, 710, 998 A.2d 1 (2010).

In the present appeal, the language of § 8-7d (a) contains nothing suggesting that the Board's failure to comply with the time requirement for holding a hearing under that statute would have resulted in an automatic approval or an invalidation of its decision on the appeal. Rather, the time limits prescribed in § 8-7d (a) are directory rather than mandatory. Accordingly, the Board's failure to hold the plaintiff's hearing in the present appeal, because the time limits in § 8-7d (a) had run, was in error.

E. Equity

The defendant Geremia argues that this court must turn to equity in fashioning an appropriate remedy because Geremia, an innocent party, will be harmed if the present matter is remanded back to the Board to hold a hearing. Geremia contends that in considering equity, the court must take into account the relative fault of the parties in the present appeal. Specifically, Geremia contends that it was the plaintiff's responsibility to ensure that the hearing on her appeal occurred within the timeframe of § 8-7d (a) and that she was negligent in failing to diligently pursue her appeal.

"Equity" is "[t]he recourse to principles of justice to correct or supplement the law as applied to particular circumstances; specif., the judicial prevention of hardship that would otherwise ensue from the literal interpretation of a legal instrument as applied to an extreme case or from the literal exclusion of a case that seems to fall within what the drafters of the instrument probably intended . . . ." Black's Law Dictionary (11th Ed. 2019). "[T]he determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court." (Internal quotation marks omitted.) *McKeever* v. *Fiore*, 78 Conn. App. 783, 788, 829 A.2d 846 (2003).

The court notes that the defendant Geremia is correct in that he is innocent insofar as his actions did not result in the Board's failure to hold a hearing on the plaintiff's application. Nevertheless, the court cannot address the defendant Geremia's arguments concerning equity and fairness without also considering those principles as they relate to the plaintiff.

"[W]here an appeal is taken to a zoning board of appeals, a public hearing is mandatory under General Statutes §§ 8-6 (a) and 8-7." *Waesche* v. *Board of Appeals*, Superior Court, judicial district of New London, Docket No. CV-19-6040088-S (March 17, 2021, *Knox, J.*). "Hearings feature prominently in the zoning process because land use decisions are quintessentially decisions impacting the public." (Internal quotation marks omitted.) *Dietzel* v. *Planning Commission*, 60 Conn. App. 153, 161, 758 A.2d 906 (2000).

"Because of the public impact of land use decisions, Connecticut's governing statutory scheme promotes public participation in such decision making, and particularly provides for public hearings with substantial procedural safeguards. [Our Appellate Court has] recognized that, [h]earings play an essential role in the scheme of zoning and in its development. . . . They furnish a method of showing to the commission the real effect of the proposed change upon the

social and economic life of the community. . . . Hearings likewise provide the necessary forum for those whose properties will be affected by a change to register their approval or disapproval and to state the reasons therefor. . . . Thus . . . a local zoning board of appeals reviewing the decision of a municipal zoning officer must hold an open hearing, in order to afford an opportunity to interested parties to make known their views and to enable the board to be guided by them. . . . The statutory scheme provides for substantial procedural protections at the latter hearing, including notice requirements, time limits for commencing the hearing and for rendering all decisions, and requirements that a record be made. Zoning decisions made by local entities without holding a required hearing have been held to be void." (Citations omitted; internal quotation marks omitted.) Id., 162.

"The only requirement [in administrative proceedings] is that the conduct of the hearing shall not violate the fundamentals of natural justice. . . . Fundamentals of natural justice require that there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary . . . . Put differently, [d]ue process of law requires that the parties involved have an opportunity to know the facts on which the commission is asked to act . . . and to offer rebuttal evidence." (Citations omitted; internal quotation marks omitted.) *Grimes* v. *Conservation Commission*, 243 Conn. 266, 273–74, 703 A.2d 101 (1997), aff'd, 49 Conn. App. 95, 712 A.2d 984 (1998).

Indeed, in the present appeal the plaintiff was not afforded fundamental fairness as she was never afforded a hearing on her appeal in the first place. As to the issue of the plaintiff's failure to pursue her appeal, the record and the plaintiff's testimony at the September 23, 2021 remote hearing do not suggest that this is the case. In her position statement, the plaintiff indicates that on February 1, 2018, when the chair of the Board contacted her to inform her that

there would not be a quorum for the February 6, 2018 public hearing, the plaintiff sent an e-mail back to the chair expressing concerns about the time deadlines that might apply to her appeal. ROR, Item 13. The plaintiff's position statement indicates that the chair of the Board represented to the plaintiff that he would check with Attorney Byrne to make sure there were not any timeline issues but that the chair never contacted the plaintiff to reschedule the hearing. Id.

Additionally, at the September 23, 2021 remote hearing, the plaintiff testified on the record as to further communications that she had with the Board concerning the status of her hearing. See General Statutes § 8-8 (k) (2) ("[t]he court shall review the proceedings of the board and shall allow any party to introduce evidence in addition to the contents of the record if . . . it appears to the court that additional testimony is necessary for the equitable disposition of the appeal"). The plaintiff testified that she discussed the status of her hearing with the chair of the Board when she saw him in person in the town of Morris in early March of 2018. The plaintiff's testimony was that during that discussion, she asked the chair when the meeting was going to take place and the chair indicated that he was hoping to schedule the hearing. The plaintiff further testified that she saw the chair of the Board in person again a few weeks thereafter in late March of 2018, and that he indicated that he was waiting to talk to everyone to get the hearing scheduled.

Based on this information contained in the record and the testimony of the plaintiff, the plaintiff was not required to do more than she did in pursuing her appeal. Indeed, equity in this appeal requires that the plaintiff receive the public hearing that she was entitled to under § 8-7.

IV

CONCLUSION

For all of the foregoing reasons, the plaintiff's appeal is sustained and this court remands the matter to the Board with the direction to hold a public hearing on the plaintiff's appeal.

Lynch, J.