

Private Standing to Restrain Zoning Violations

By Andrew D. Brodnick

Zoning regulations protect property owners by restricting the manner in which neighboring properties may be used. Accordingly, property owners expect that the municipality will enforce those regulations when those regulations are violated.

Unfortunately, a municipality sometimes neglects or refuses to enforce such regulations. When the municipality does not enforce its zoning regulations, a property owner may not individually enforce zoning regulations based solely on a general desire to see zoning code violations restrained.

A property owner has standing to restrain a code violation only when the property owner suffers "special damages," i.e., damages that are causing specified damages different from the damage suffered generally by the community as a result of the violation. Only then does a property owner have standing to maintain a private cause of action based upon a public right which is otherwise enforced by the municipality.

General Enforcement of Zoning Code Violations

Zoning ordinances are enacted to protect the health, safety and welfare of the community.¹ A property owner relies both on the "promise" that a zoning ordinance provides to one's property, and on the fact that the municipality will enforce the code to protect against diminution in the value of one's property.²

While a property owner may rely on the protection afforded by zoning restrictions, an owner may not enforce zoning regulations solely on the grounds that such enforcement will benefit the general welfare

of the community and enhance property values.³ In other words, the general desire to see zoning regulations strictly enforced does not confer standing.⁴ Instead, the decision to enforce zoning regulations rests solely with the municipality, and a citizen may not compel zoning officials to punish or restrain a violation.⁵ As a general rule, a private party may not assert a claim which complains of the same damages which a zoning violation causes the public generally.⁶

Private Right of Action

A property owner obtains standing to enforce a zoning regulation only when: (i) the violation of that regulation affects "a discrete, separate identifiable interest" distinguishable from the general public interest;⁷ and, (ii) the owner can demonstrate that his or her interest is one that the code was meant to protect.⁸

The special interest of the owner must be "substantially damaged" by the zoning violation in order for the owner to obtain standing to enforce zoning regulations in his or her own right.⁹

The finding that an owner has standing involves a delicate balance of competing interests. On the one hand, standing requirements should be liberally construed "so that land use disputes are settled on their own merits rather than by preclusive, restrictive standing rules."¹⁰ On the other hand, courts must also be sensitive to granting standing in a manner which could interfere with the municipal process.¹¹

Special damages are established by demonstrating that the value of

the owner's land has been diminished as a result of the violation.¹² The owner must provide "specific, detailed evidence" of the damage suffered.¹³ Conclusory allegations are insufficient.¹⁴ As previously noted, the damages sustained must differ from that suffered by other residents of the community, and the alleged injury must fall "within the zone of interests sought to be promoted or protected by the statute."¹⁵

Special damages need not be pleaded and proved and may be inferred when one is in close proximity to the violation.¹⁶ This proximity may extend to one in "eyeshot" of the violation.¹⁷ However, the party affected by the violation must still show that the interest violated is within the "zone of interest" to be protected, and still must show irreparable injury and a diminution of the value of the party's property.¹⁸

The "proximity" test is applied by determining whether the neighboring owner is close enough to the violation to suffer some harm other than that experienced by the public generally.¹⁹ However, "even where petitioner's premises are physically close to the subject property, an ad hoc determination may be required as to whether a particular petitioner itself has a legally protectable interest so as to confer standing."²⁰

An owner seeking to restrain a zoning violation must establish the traditional standards of entitlement to injunctive relief: irreparable injury, likelihood of success on the merits and the equities balancing in the owner's favor.²¹

The fact that a zoning violation may cause a diversion of business does not constitute special damages.

In *Cord Meyer Development Co. v. Bell Bay Drugs, Inc.*²² the Court of Appeals upheld the dismissal of an action commenced to enjoin a code violation by which a pharmacy in proximity to the complaining party was operated. The owner must demonstrate something “offensive” about the effect of the violation of the zoning code above and beyond that of mere competition.²³

If a property owner has suffered special damages, he or she need not exhaust administrative remedies before commencing a private cause of action.²⁴ Nor does a litigant have to wait for public officials to take action.²⁵

Cases that grant owners standing to restrain a zoning violation are fact specific, but some examples may be helpful. In *Williams v. Hertzwig*,²⁶ plaintiffs obtained an injunction restraining their neighbors from maintaining a dog kennel which violated the zoning code. In another case, the construction of a motel was enjoined by neighboring property owners.²⁷ Neighboring business owners had standing to enjoin an adult entertainment establishment,²⁸ and were granted standing to seek an injunction against the operation of a flea market on a neighboring parking lot.²⁹

One court refused to enjoin the construction of radio towers.³⁰ Restraint of a prior non-conforming use of a sawmill operation—even after the scope of the operations increased—could not be enjoined on the grounds that it constituted a violation of the zoning code.³¹ Similarly, another court declined to enjoin the operation of a marine sales and service facility, even where it was found that the use of the property violated the zoning ordinance.³²

Statutory Basis for Relief

While an individual owner must demonstrate special damages to enforce zoning regulations, there are statutory methods by which multiple owners may enforce zoning regulations without demonstrating special damages. Curiously, this right is dependent on whether the property is located in a town, village or city.

For instance, New York Town Law provides that the proper local authorities may direct the abatement or correction of a violation of any building improperly constructed or altered, or of property subdivided in violation of Town Law.³³ If the local town authorities do not enforce the code or restrain a violation, a resident taxpayer may make a written request on that officer to do so, and, after ten days, three resident taxpayers, who are jointly or severally aggrieved by a violation and who reside in the district in which the violation is located, may institute an action in the same manner as the local authority.³⁴

This provides a method for relief by which resident taxpayers may unify to bypass the municipal enforcement remedy.³⁵ The statute also provides a means of enforcing the code without having to show the injunctive requirements which would be required for a private action.³⁶

Curiously, the Village Law and the City Law do not have analogous provisions.³⁷

Conclusion

While violations of zoning regulations may be enforced by a municipality, a property owner does not have a general right as a member of the community to enforce those regulations. However, if the violation causes the owner’s property specific,

demonstrable and unique damage, then the owner obtains standing to restrain the violation through a private cause of action.

Endnotes

1. *Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of the Town of North Hempstead*, 69 N.Y.S.2d 406, 412, 515 N.Y.S.2d 418, 420 (1987).
2. *Id.*
3. *Blumberg v. Hill*, 119 N.Y.S.2d 855, 857 (Sup. Ct., Westchester Co. 1953).
4. *Hattem v. Silver*, 19 Misc. 2d 1091, 1092, 190 N.Y.S.2d 752, 753 (Sup. Ct., Nassau Co. 1959).
5. *Young v. Town of Huntington*, 121 A.D.2d 641, 642, 503 N.Y.S.2d 657 (2d Dep’t 1986).
6. *Copart Industries v. Consolidated Edison of New York*, 41 N.Y.2d 564, 568, 394 N.Y.S.2d 169, 172 (1977).
7. *Little Joseph Realty v. Town of Babylon*, 41 N.Y.2d 738, 742, 395 N.Y.S.2d 428, 431 (1977) (citation omitted).
8. *Sun-Brite Car Wash, Inc.*, 69 N.Y.2d at 408 (citations omitted).
9. *Slevin v. Long Island Jewish Medical Center*, 66 Misc. 2d 312, 314, 319 N.Y.S.2d 937, 942 (Sup. Ct., Nassau Co. 1971) (citations omitted).
10. *Parisella v. Town of Fishkill*, 209 A.D.2d 850, 851, 619 N.Y.S.2d 169, 170 (3d Dep’t 1994) (citation omitted).
11. *Sun-Brite Car Wash, Inc.*, 69 N.Y.2d at 413 (citations omitted).
12. *Futerfas v. Shultis*, 209 A.D.2d 761, 762, 618 N.Y.S.2d 127, 128 (2d Dep’t 1994) (citations omitted).
13. *Santulli v. Drybka*, 196 A.D.2d 862, 863, 602 N.Y.S.2d 151, 151–52 (2d Dep’t 1993) (citation omitted).
14. *Guzzardi v. Perry’s Boats, Inc.*, 92 A.D.2d 250, 253, 460 N.Y.S.2d 78, 81 (2d Dep’t 1983) (citations omitted).
15. *Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 441, 628 N.Y.S.2d 375, 377 (2d Dep’t 1995) (citations omitted).
16. *Sun-Brite Car Wash, Inc.*, 69 N.Y.2d at 408; *Williams v. Hertzwig*, 251 A.D.2d 655, 675 N.Y.S.2d 113 (2d Dep’t 1998).
17. *Daum v. Meade*, 35 A.D.2d 598, 313 N.Y.S.2d 625 (2d Dep’t 1970).
18. *Sun-Brite Car Wash, Inc.*, 69 N.Y.2d at 416.

19. *Oates v. Village of Watkins Glen*, 290 A.D.2d 758, 761, 736 N.Y.S.2d 478, 481 (3d Dep't 2002) (citations omitted).
20. *Id.*
21. *Town of East Hampton v. Buffa*, 157 A.D.2d 714, 549 N.Y.S.2d 813 (2d Dep't 1990).
22. 20 N.Y.2d 211, 282 N.Y.S.2d 259 (1967).
23. *Town of East Hampton*, 20 N.Y.2d at 216, 282 N.Y.S.2d at 263. *See also Sun-Brite Car Wash Inc.*, 69 N.Y.2d at 415 (citations omitted).
24. *Haddad v. Salzman*, 188 A.D.2d 515, 591 N.Y.S.2d 193 (2d Dep't 1992); *Armstrong v. Gibson & Cushman*, 202 Misc. 399, 117 N.Y.S.2d 185 (Sup. Ct., Suffolk Co. 1952).
25. *Daub v. Popkin*, 171 N.Y.S.2d 513 (1st Dep't 1958).
26. 251 A.D.2d 655, 675 N.Y.S.2d 113 (2d Dep't 1998).
27. *Reichenbach v. Windward at Southampton*, 80 Misc. 2d 1031, 364 N.Y.S.2d 283 (Sup. Ct., Suffolk Co. 1975).
28. *Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 441, 628 N.Y.S.2d 375, 377 (2d Dep't 1995) (citations omitted) (injunction denied on other grounds).
29. *Camarda v. Vanderbilt*, 100 A.D.2d 836, 473 N.Y.S.2d 831 (2d Dep't 1984).
30. *Allen Avionics, Inc. v. Universal Broadcasting Corp.*, 118 A.D.2d 527, 499 N.Y.S.2d 154 (2d Dep't 1986).
31. *Futerfas v. Shultis*, 209 A.D.2d 781, 618 N.Y.S.2d 127 (3d Dep't 1994).
32. *Beaudin v. Town of Alexandria Planning Board*, 233 A.D.2d 855, 649 N.Y.S.2d 278 (4th Dep't 1996).
33. Town Law § 268.
34. Town Law § 268(2).
35. *Little Joseph Realty v. Town of Babylon*, 41 N.Y.2d 738, 741, 395 N.Y.S.2d 428, 431 (1977).
36. *Eggert v. LeFever*, 222 A.D.2d 1043, 1044, 635 N.Y.S.2d 857, 858 (4th Dep't 1995) (citations omitted).
37. Village Law § 7-714; 2 Salkin, *New York Zoning Law & Practice*, § 34:07, p. 34-121 (4th ed.).

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