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THE "AGGRIEVED PERSON" REQUIREMENT IN ZONING

INTRODUCTION

During the past twenty years, there has been a growing body of law in the area of zoning. Zoning enabling legislation has now been passed in all fifty states¹ under the power commonly referred to as the police power.² This power normally rests in the state legislature, but very often it is delegated to individual towns and cities within a state.

Although each state has its own statutory enactments, the comprehensive zoning ordinances enacted within the several states normally follow the same general pattern. Most state statutes are very similar to the Standard Zoning Enabling Act³ under which there is a general delegation of power to a city to regulate and control the use of property. Although today there is a recognition of the many benefits that derive from these land-use laws, there have also developed certain areas where judicial review has become necessary in order to preserve the right of an individual in private property which could be interfered with by restrictions and changes in the zoning plans.⁴

Generally, a board of appeals or adjustment is established to hear and decide appeals from any order or determination made by an administrative officer, or to authorize variances or exceptions from the strict terms of an ordinance.⁵ A board of zoning appeals ordinarily acquires jurisdiction of a case when a party who has applied for a building permit is refused, or when some affected third party opposes the issuance of a permit. For the purpose of providing flexibility in the administration of zoning ordinances and of safeguarding the rights of an individual in the use of his property, the Standard Enabling Act provides that appeals may be taken to a Court by a "*person aggrieved . . . by any decision of the administrative officer.*"⁶ This same right

1. See Cunningham, *Land-Use Control—The State and Local Programs*, 50 IOWA L. REV. 367, 369 n. 3 (1965).

2. 1 YOKLEY, *ZONING LAW AND PRACTICE* § 1-1 (3rd ed. 1965); HAAR, *LAND-USE PLANNING* 147 (1959); *Village of Euclid v. Amber Realty Company*, 272 U.S. 365 (1926).

3. See, 3 RATHKOPF, *LAW OF ZONING AND PLANNING* 100-1 (3rd ed. 1964).

4. *Id.*, at 100-1 to -6. The Standard Enabling Act specifically provides for judicial review of zoning determinations.

5. See *e.g.*, CONN. GEN. STAT. ANN., tit. 8-1 to 8-13 (1960); ILL. STAT. ANN., vol. 25, § 73-1 to 73-5 (1961); MASS. GEN. LAWS, ch. 40A, § 1-22 (1959); VA. CODE ANN., § 15.1-495 (1964).

6. *Id.*, at 100-1 to -6.

is found in almost all of the state statutes,⁷ although none of them define who may qualify as an "aggrieved person." Thus, it has been left to the courts to determine what standing a person must have to appeal a decision of the board of appeals or adjustment. The decisions of the courts in determining this issue have created a conflict as to the procedural standing that a person must have to qualify as a "person aggrieved."

THE RIGHT OF APPEAL IN GENERAL

The right to appeal a decision of the zoning board of appeals or adjustment is not available until all possible administrative remedies are exhausted.⁸ Once a final decision is rendered and no other administrative alternative exists, a party then has the right of judicial review as long as he can prove that he is an "aggrieved person" as a result of a zoning board's decision.⁹

Generally, it is held that to be an "aggrieved person;" i.e., one authorized by statute to bring review proceedings, one must be specially, personally, and adversely affected by the board's determination, as distinguished from a party who is only affected in a general way.¹⁰ The

7. See, e.g., CONN. GEN. STAT. ANN., tit. 8, § 8-8 (Cum. Supp. 1965); DEL. CODE ANN., ch. 22, § 328 (Cum. Supp. 1964); FLA. STAT. ANN., § 176.16 (Cum. Supp. 1965); ILL. STAT. ANN., ch. 24, § 11-13-13 (1962); BURNS IND. STAT. ANN., § 53-783 (1964); IOWA CODE ANN., § 414.15 (1949); MARYLAND STAT. ANN., art. 66B, § 7(J) (1957); MASS. GEN. LAWS, ch. 40A, § 21 (1952); ME. STAT. ANN., tit. 29-31, § 4954(2) (1965); MICH. STAT. ANN., vol. 4A, 5.2940 (1958); S.C. CODE, ch. 4, § 14-376 (1962); VA. CODE ANN., § 15.1-497 (1964). The Virginia statute, which is typical of most states, is as follows: "*Certiorari to review decision of board—Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer . . . , may present to the circuit or corporation court of the county or city a petition specifying the grounds on which aggrieved within thirty days after the filing of the decision in the office of the board.*" (Emphasis added).

8. *County Lands, Inc. v. Swinnerton*, 151 Conn. 27, 193 A.2d 483 (1963).

9. *Langbein v. Planning Bd. of Stamford*, 145 Conn. 674, 146 A.2d 412 (1958) (burden of proving that one is an "aggrieved person" is on the party appealing); *Luery v. Zoning Bd. of Stamford*, 150 Conn. 136, 187 A. 2d 247 (1962) (issue is ordinarily one that is a question of law for the court to determine).

10. See, e.g., *Josephson v. Planning Bd. of Stamford*, 151 Conn. 489, 199 A. 2d 690 (1964); *Tyler v. Bd. of Zoning Appeals*, 145 Conn. 655, 145 A. 2d 832 (1958); *Langbein v. Planning Bd. of Stamford*, 145 Conn. 674, 146 A. 2d 412 (1958); *O'Connor v. Bd. of Zoning Appeals*, 140 Conn. 65, 98 A. 2d 515 (1953); *Moran v. Zoning Bd. of Appeals*, 17 Ill. App. 280, 149 N.E. 2d 480 (1958); *Speakman v. Mayor*, 8 N.J. 250, 84 A. 2d 715 (1951); *Hattem v. Silver*, 19 Misc. 2d 1091, 190 N.Y.S. 2d 752 (1958); *Bloom v. Wides*, 164 Ohio St. 138, 128 N.E. 2d 31 (1955); *Flynn v. Zoning Bd. of Review*, 77 R. I. 118, 73 A. 2d 808 (1950).

majority of the courts have tended to stress the importance of some legal or equitable interest in the subject matter of the decision in order for a person to have the standing necessary to appeal.¹¹ However, a minority of courts have been more liberal in granting the right of appeal by taking a broad view of the requirements in interpreting the "aggrieved person" provision of the statutes. These courts have allowed an appeal as a matter or right as long as a party is adversely affected within the scope of the zoning ordinances.¹² On the other hand, most courts hold that mere generalizations and fears are not sufficient to entitle one to appeal.¹³ Thus if a party's only interest in appealing is to have strict enforcement of the zoning regulations or to protect general property values, these facts alone are not a sufficient interest to grant a party the standing to appeal.¹⁴ Thus it appears that some courts have allowed much greater latitude than others in determining the qualifications of a party as an aggrieved person. Since there are several situations in which one might appeal to the courts, the following sections will discuss each of these situations in detail specifically concerning the rights of and the limitations upon the complainants as expressed by the courts. The first situation below deals with those individuals who have a direct interest in the property and are appealing to the courts because their application for permit or variance had been denied.

APPLICANTS SEEKING "AGGRIEVED PERSON" STATUS

An owner of property obviously has the right to appeal a decision denying him a variance or an exception, since being the outright, fee simple owner of realty, he has a definite legal interest in the land and thus is always accorded the status of an "aggrieved person."¹⁵ In an

11. Cases cited note 10 *supra*.

12. *Buckminster v. Zoning Bd. of Review of Pawtucket*, 69 R.I. 396, 30 A. 2d 104 (1943); *O'Connor v. Bd. of Zoning Appeals*, 140 Conn. 65, 98 A. 2d 515 (1953).

13. *Tucker v. Zoning Bd. of Appeals*, 151 Conn. 510, 199 A. 2d 685 (1964); *Joyce v. Zoning Bd. of Appeals*, 150 Conn. 696, 187 A. 2d 239 (1962); *Garner v. DuPage County*, 133 N.E. 2d 303, 8 Ill. 2d 155 (1956).

14. *Downey v. Inc. Village of Ardsley*, 152 N.Y.S. 2d 195, *aff'd mem.*, 158 N.Y.S. 2d 306, 3 A.D. 2d 663 (1957); *Blumberg v. Hill*, 119 N.Y.S. 2d 855 (1953); *Property Owners Ass'n of Garden City Estates, Inc. v. Bd. of Zoning Appeals*, 2 Misc. 2d 309, 123 N.Y.S. 2d 716 (1953).

15. See, e.g., *City of Miami v. Rosen*, 151 Fla. 677, 10 So. 2d 307 (1942); *Maranelli v. Bd. of Appeals of the Bldg. Dep't.*, 275 Mass. 169, 175 N.E. 479 (1931); *Frankel v. City of Baltimore*, 223 Md. 640, 162 A. 2d 447 (1961); *Jersey Triangle Corp. v. Bd. of Adjustment*, 127 N.J.L. 194, 21 A. 2d 845 (1941); *Slater v. Toohill*, 276 App. Div. 850, 93 N.Y.S. 2d 153 (1949); *Appeal of Denny Building Corp.*, 387 Pa. 311, 127 A. 2d 724

Ohio decision, the court stated that there could be no question but that the owner of property who was denied a nonconforming-use permit was a "party adversely affected" and was a proper party to appeal.¹⁶ Furthermore, a Pennsylvania court held that the record owners of land subject to an uncompleted agreement of sale, had a sufficient interest to appeal, as the owner might not get his purchase price if the vendee could not use the land as he planned.¹⁷ Thus, an owner of property involved in a zoning determination has the right to appeal any decision adverse to his interests. However, the courts have not been as unanimous in viewing the right of a prospective vendee to appeal.

Prospective vendees under a contract to purchase the affected property are accorded different procedural standings depending upon the type of contract, conditional or unconditional, under which the sale is to be consummated. A third situation is found when the legal owner consents or joins with the prospective vendee in the zoning proceedings.

The general rule allows a prospective vendee under an unconditional contract to purchase the land the right to appeal a decision in regard to the property involved.¹⁸ The reason commonly given by the courts for this view is that under the general principles of property law, a prospective vendee is the equitable owner of the land and thus has a sufficient interest in the property to entitle him to appeal.¹⁹ Thus, if the contract is unconditional and both parties are legally bound to accept the terms of the contract, an equitable owner is considered an "aggrieved person" within the meaning of the statutes.

(1957); *Scholl v. Yeadon*, 148 Pa. Super. 601, 26 A. 2d 135 (1942); *Hickerson v. Flannery*, 42 Tenn. App. 329, 302 S.W. 2d 508 (1956); *Clark v. Bd. of Zoning Appeals*, 301 N.Y. 86, 92 N.E. 2d 903 (1950), *cert. denied* 340 U.S. 933 (1951); *Flynn v. Zoning Bd. of Review*, 77 R.I. 118, 73 A. 2d 808 (1950); *Dunham v. Zoning Bd.*, 68 R.I. 88, 26 A. 2d 614 (1942).

16. *Ohio State Students Trailer Co-Op, Inc. v. County of Franklin*, 68 Ohio L. Abs. 569, 123 N.E. 2d 542 (1953).

17. *Elvan v. Exley*, 58 Pa. D. & C. 538 (1947). See also, *Hayden v. Zoning Bd. of Appeals*, 214 A. 2d 837 (Conn. 1965) (a part owner of realty may appeal alone); *Moyerman v. Zoning Bd. of Adjustments*, 37 Del. Co. 87 (Pa. 1951); *Weber v. Cheyenne*, 55 Wyo. 202, 97 P. 2d 667 (1940).

18. See, e.g., *Burr v. Keene*, 105 N.H. 228, 196 A. 2d 63 (1963); *Cox v. Wall Tp.*, 39 N.J. Super. 243, 120 A. 2d 779 (1956); *Sigretto v. Bd. of Adjustment*, 134 N.J.L. 587, 50 A. 2d 492 (1946); *Union Free School Dist. v. Hewlett Bay Park*, 198 Misc. 932, 102 N.Y.S. 2d 81 (1950), *aff'd in* 278 App. Div. 706, 103 N.Y.S. 2d 831 (1951); *Henry Norman Associates, Inc. v. Ketler*, 16 Misc. 2d 764, 183 N.Y.S. 2d 875 (1959); *Mandalay Constr., Inc. v. Zimmer*, 27 Misc. 2d 543, 194 N.Y.S. 2d 404 (1959).

19. See, e.g., *Scheer v. Weis*, 13 Wis. 2d 408, 108 N.E. 2d 523 (1961); *Seithick v. Philadelphia Zoning Bd. of Adjustment*, 13 Pa. D. & C. 2d 43 (1957).

Also, according to the majority view, a purchaser under a contract conditioned upon the granting of a variance or exception is allowed to appeal a decision denying his request.²⁰ The courts, in support of this view, often give as a reason the fact that the equitable owner might be deemed the agent of the true owner.²¹ A Massachusetts court went so far as to hold that a conditional vendee was an "aggrieved person" because of the economic interests he had in the property.²²

On the other hand, a minority of courts have denied the prospective vendee, under a conditional contract, the right to appeal. The reasoning given by the courts in denying standing is that the holder of a conditional contract cannot prove sufficient hardship as a result of an adverse decision by a board of appeals or adjustment, since under a conditional contract, the purchaser is not legally bound to purchase; and thus is not in danger of losing anything.²³

It appears, however, that the majority view is the better reasoned, as a prospective vendee under a conditional contract would still appear to have a special and personal interest in the outcome of the zoning determination. Furthermore, the hardship involved because of the denial of the variance or exception not only affects the individual requesting it, but mainly attaches to the property itself, and a prospective vendee does have an equitable interest in the property. These interests should be sufficient to entitle him to appeal and the courts should not deny him the right to judicial review merely because his contract is conditional upon some other factor.

In several cases the courts have allowed a prospective vendee the right to appeal because the legal owner had joined in or consented to the zoning proceedings.²⁴ In this situation the courts do not have to

20. See, e.g., *Arant v. Bd. of Adjustment*, 271 Ala. 600, 126 So. 2d 100 (1960); *Gray v. Bd. of Supervisors*, 154 Cal. App. 2d 700, 316 P. 2d 618 (1957); *Burr v. Keene*, 105 N.H. 228, 196 A. 2d 63 (1963); *Reiskin v. County Council*, 229 Md. 142, 182 A. 2d 34 (1962); *City of Baltimore v. Cohn*, 204 Md. 523, 105 A. 2d 482 (1954).

21. *Arant v. Bd. of Adjustment*, 271 Ala. 600, 126 So. 2d 100 (1960); *Wilson v. Township Comm.*, 123 N.J.L. 474, 9 A. 2d 771 (1939); *Hickox v. Griffin*, 274 App. Div. 792, 79 N.Y.S. 2d 193 (1948), *rev'd on other grounds*, 298 N.Y. 365, 83 N.E. 2d 836 (1949) (held that even if an equitable owner did not have sufficient interest to appeal *alone*, yet he still was deemed to act as agent for and with the consent of the legal owner).

22. *Carson v. Bd. of Appeals*, 321 Mass. 649, 75 N.E. 2d 116 (1947).

23. *Sun Oil Co. v. Macauley*, 72 R.I. 206, 49 A. 2d 917 (1946); *McNichol v. Gallagher*, 66 Pa. D. & C. 338 (1948); *Minney v. Azusa*, 164 Cal. App. 2d 12, 330 P. 2d 255 (1948), *app. dism'd* 359 U.S. 436, 79 S. Ct. 941 (1959).

24. See, e.g., *Dade County v. Jim's Northwest, Inc.*, 171 So. 2d 612 (Fla. App. 1965); *Marinelli v. Bd. of Appeals of the Bldg. Dep't*, 275 Mass. 169, 175 N.E. 479 (1931); *Colt v. Bernard*, 279 S.W. 2d 527 (Mo. Ct. App. 1955); *Slamowitz v. Jelleme*, 3 N.J. Misc.

decide if the prospective vendee is contractually bound or not, as the legal owner, by his conduct in joining in the application, indicates his acquiescence in the zoning requests put forth by the prospective vendee.

In conclusion, it appears that a prospective vendee, under either a conditional or unconditional contract, can easily insure his standing in court by merely having the legal owner join with him in applying for the zoning change. The validity of the minority view in denying the conditional vendee the right to appeal seems dubious, as he still is the equitable owner and would have a strong personal interest in the proceedings, especially when the contract is conditioned only upon the granting of a variance or exception.

Still another situation in which the courts have determined "aggrieved person" status is that of a lessee. While there is authority to the contrary, a lessee has been regarded as having sufficient standing to appeal. When there is a written lease the courts recognize the binding nature of the lease and point out that a lessee may be just as seriously aggrieved or affected by an action of an administrative board as the legal owner.²⁵ The Rhode Island Supreme Court went even further and specifically stated that a lessee had a sufficient interest in the leased premises to permit him *alone* to appeal a decision of the town's zoning board.²⁶

However, where there exists an oral lease, several courts have denied the lessee the right to institute proceedings affecting the leased property.²⁷ The courts in denying this right have stressed the fact that a lessee under an oral lease cannot suffer any unnecessary hardships because he is not bound to remain on the premises involved.²⁸

The distinction made by the courts between oral and written leases

1169, 130 Atl. 883 (1925); State *ex rel.* Waltz & Pemco, Inc. v. Independence, 69 Ohio L. Abs. 445, 125 N.E. 2d 911 (1952), State *ex rel.* Sun Oil Co. v. Euclid, 164 Ohio St. 265, 130 N.E. 2d 336 (1955); Stoll v. Gulf Oil Corp., 79 Ohio L. Abs. 145, 155 N.E. 2d 83 (1958); Jersey Triangle Corporation v. Bd. of Adjustment, 127 N.J.L. 194, 21 A. 2d 845 (1941).

25. See, e.g., Finn v. Municipal Council of Clifton, 136 N.J.L. 34, 53 A. 2d 790 (1947); Nicholson v. Zoning Bd. of Adjustment, 392 Pa. 278, 140 A. 2d 604 (1958); Richmond v. Philadelphia Zoning Bd. of Adjustment, 391 Pa. 254, 137 A. 2d 280 (1958) (court also considered the tenant as the agent of the owner).

26. Ralston Purina Company v. Zoning Bd. of Westerly, 64 R.I. 197, 12 A. 2d 219 (1940).

27. See, e.g., *In re* McLaughlin, 42 Del. Co. 388 (Pa.C.&P. 1955); Bloom v. Wides, 164 Ohio St. 138, 138 N.E. 2d 31 (1955).

28. Kleinman v. Zoning Bd. of Appeals, 6 Pa. D. & C. 679, 42 Del. Co. 413 (1955); Little Rock v. Goodman, 222 Ark. 350, 260 S.W. 2d 450 (1953) (held that mere tenants-at-will were not real parties in interest); see also, Gallagher v. Zoning Bd. of Review, 186 A. 2d 325 (1962).

does not appear to be a fair one. Under both types of leases, there exists a binding legal obligation which should support the legal interest requirement of the "aggrieved person." Furthermore, the courts should especially examine the length of a lease and the economic interest that a lessee might have in the premises. It would seem that a lessee has just as avid an interest in the use of the property leased and could be equally as damaged as the legal owners by an adverse zoning decision.

The holder of a bare option to purchase realty is generally not accorded the status of an "aggrieved person."²⁹ One reason given for denying him the right to appeal is that the holder of an option is not bound to purchase the land, and thus is without any legal right or interest in the property which might incur hardship as a result of an adverse zoning decision.³⁰

However, the holder of an option to purchase has ordinarily been granted standing to appeal when joined by the legal owner,³¹ just as in the case of a prospective vendee under a conditional contract. Moreover, a few courts have gone so far as to allow an optionee the right to appeal *alone*, even without the joinder of the legal owner.³² These courts have noted that under the terms of an option agreement, the owner contemplated that the optionee would take action, and thus they allow the optionee the right to appeal.³³ It would seem, however, that the better view would require the optionee to have at least the consent of the legal owner before he is granted the status of an "aggrieved person."

Another situation involving the consent of the legal owner is the status of an agent. The courts have generally held that an owner of property may designate an agent to prosecute an appeal on his behalf, or that he may assign his rights to another for the purpose of seeking zoning determinations.³⁴ As a result of this view, in several cases where

29. See generally, 2 RATHKOFF, ZONING AND PLANNING, § 40-6 (3d ed. 1956); Tripp v. Zoning Bd. of Review, 84 R.I. 262, 123 A. 2d 144 (1956).

30. Parise v. Zoning Bd. of Review, 92 R.I. 338, 168 A. 2d 476 (1961) (under the terms of an option agreement, only the optionor is legally bound to sell).

31. See, e.g., Cranston Jewish Center v. Zoning Bd. of Review, 93 R.I. 364, 175 A. 2d 269 (1961); Hickerson v. Flannery, 42 Tenn. App. 329, 302 S.W. 2d 508 (1956); Dunham v. Zoning Bd. of Westerly, 68 R.I. 88, 26 A. 2d 614 (1942).

32. See, e.g., Smith v. Selligman, 270 Ky. 69, 109 S.W. 2d 14 (1937); Hatch v. Fiscal Court of Fayette County, 242 S.W. 2d 1018 (Ky. 1951).

33. Babitzke v. Harvester, 32 Ill. App. 2d 899, 177 N.E. 2d 644 (1961); see cases cited note 32 *supra*.

34. See, e.g., Arant v. Bd. of Adjustments, 271 Ala. 600, 126 So. 2d 100 (1961); Cohn v. County Bd. of Supervisors, 135 Cal. App. 2d 180, 286 P.2d 836 (1955); Feneck v.

the courts have found difficulty in establishing a direct legal interest in a party, the courts have *deemed* such a party an agent, based upon some legal relationship existing between the party and the legal owner.³⁵ This relationship was previously discussed in regard to both prospective vendees and holders of a bare option to purchase.³⁶ Thus in most jurisdictions an owner may delegate an agent to prosecute an appeal, and there appears no valid reason why an agent should not have the rights of and be accorded the same status as the legal owner.

In conclusion, one who has a direct interest in the property and who is denied a zoning change is ordinarily granted the status of an aggrieved person. Thus, in determining the status of applicants, the courts have emphasized the factor of some legal or equitable interest in the property. Therefore, when an applicant can prove no legally cognizable interest, he is usually denied the right to judicial review.³⁷ But there has been some willingness on the part of a few courts to allow a party to appeal even though he was without a direct legal interest in the affected property, although in these cases there can usually be found some economic interests to which the courts have given some importance. This is seen in a Wisconsin case where an insurance company was allowed to appeal even though it had no legal interest, because it stood to lose a great deal of money if the zoning administrators denied a repair permit.³⁸ Thus, although a majority of the courts stress the importance of the

Murdock, 16 Misc. 2d 789, 181 N.Y.S. 2d 441 (1958); *Hickox v. Griffin*, 274 App. Div. 792, 79 N.Y.S. 2d 196, *rev'd on other grounds*, 298 N.Y. 365, 83 N.E. 2d 836; *Stout v. Jenkins*, 268 S.W. 2d 643 (Ky. 1954) (construction company allowed to appeal on the part of an absentee owner); *Protomastro v. Bd. of Adjustment*, 3 N.J. Super 539, 67 A. 2d 261 (1949) *rev'd on other grounds*, 3 N.Y. 494, 70 A. 2d 873 (1950) (architect in place of true owner).

35. See cases cited notes 24, 34 *supra*.

36. See cases cited notes 21 & 24, 31-33 *supra*.

37. See, e.g., *Jensen's Inc. v. Town of Plainville*, 146 Conn. 311, 150 A. 2d 297 (1959); *Kreiger v. Scott*, 4 N.J. Misc. 942, 134 Atl. 901 (1926); *Underhill v. Bd. of Appeals*, 17 Misc. 2d 257, 72 N.Y.S. 2d 588, *aff'd in* 273 App. Div. 788, 75 N.Y.S. 2d 327 *aff'd* 297 N.Y. 937, 80 N.E. 2d 342 (1948); *Appeal of Schaeffer*, 7 Pa. D. & C. 2d 468, 72 Montg. Co. L. R. 515 (1956) (applicant's only interest was a "hope" to purchase realty); *Lindenwood Improvement Ass'n v. Lawrence*, 278 S.W. 2d 30 (Ky. 1958); *Belle Haven Citizens Ass'n Inc. v. Schumann*, 201 Va. 36, 109 S.E. 2d 139 (1959); *Dimitri v. Zoning Bd. of Review*, 61 R.I. 325, 200 Atl. 963 (1938); *Hattem v. Silver*, 19 Misc. 2d 1091, 190 N.Y.S. 2d 752 (1958) (owner who had divested himself of title during the proceedings, held no longer to be aggrieved person).

38. *State ex rel. Home Ins. Co. v. Burt*, 23 Wis. 2d 231, 127 N.W. 2d 270 (1964); see also, *Binford v. Western Electric Co.*, 219 Ga. 404, 133 S.E. 2d 361 (1963); *Bd. of Zoning Appeals v. Moyer*, 108 Ind. App. 198, 27 N.E. 2d 905 (1940); *Tramonti v. Zoning Bd. of Review*, 93 R.I. 131, 172 A. 2d 93 (1961).

legal factor, a few courts have recognized the hardship that could be suffered by one with only an economic interest, and have justly accorded such individuals the right of appeal.

Looked at in its broadest application, the "aggrieved person" provision in the zoning statutes was meant to provide a safety device to those who felt that the decision of the administrator or zoning board was unjust or arbitrary in regard to their property. The fact that an application was signed by an oral lessee or conditional vendee should not in itself deny such a party the right to appeal without other factors also being considered. But because of the indefiniteness of the statutes as to who qualifies under the "aggrieved person" provision, the courts have consequently been forced to determine this issue for themselves, and the result has been an unfortunate lack of uniformity in their decisions. However, this indefiniteness in the wording of the statutes has proved beneficial in one aspect, in that it has allowed the courts to grant "aggrieved" status to third parties with no direct interest in the property.

THIRD PARTIES AS "PERSONS AGGRIEVED"

Under the typical state statute, which allows "any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer . . ." ³⁹ to appeal to the courts, a third party, not owning the property in question, may still qualify as an aggrieved person under the broad provisions of the statutes. A third party may be in such a situation that a decision of the board would adversely affect him in the use or enjoyment of his property. Thus, even though he is without a direct legal or equitable interest in the involved property, he is given the right to appeal. Just as the courts have developed different views upon the status of applicants seeking court review, there is also a diversity of opinion upon the requirements for third parties.

That a third party should have this right of review is basic to zoning theory. A New Jersey court has stated that "One of the fundamental theories of a zoning ordinance is to place all owners in a zone on the same footing and avoid invidious distinctions." ⁴⁰ Thus one owner would seem to have a lively interest in zoning decisions involving other owners in the same zoning district. However, the courts have held that in order to qualify as a third party aggrieved, it is necessary to prove some special damages which are not generally shared with other property

39. VA. CODE ANN., § 15.1-497 (1964).

40. *Conaway v. Atlantic City*, 107 N.J. Law 404, 154 A. 2d 6, 7 (1961).

owners similarly situated.⁴¹ Generally, within the third party classification are nearby property owners, nonresidents, business competitors, taxpayers, and associations. The remainder of this discussion will be devoted to the "aggrieved person" status of these third parties.

It is generally held that one who is in close proximity to the property for which a variance or use permit was issued and who can also prove a special interest in the proceedings, has sufficient standing to appeal a decision granting a permit.⁴² Ordinarily, the fact that one is in close proximity is in itself sufficient to establish the required interest necessary for court review.⁴³ When the land abuts the property in question, there is no doubt of the adjoining owner's right to appeal.⁴⁴ However, the courts have not reached consistent views in regard to those relatively near the property involved. For instance, one court held that one whose property was more than two blocks away was an "aggrieved person,"⁴⁵ and several others have sustained the right to appeal by those who owned a home on a different street, one-half mile away,⁴⁶ or those who resided a "short distance" away.⁴⁷ On the other hand, these same courts have denied the right to appeal to one who was a considerable distance away and out of sight of the affected property.⁴⁸ Moreover, it has

41. See cases cited notes 8-14 *supra*; see also *Downey v. Incorporated Village of Ardsley*, 152 N.Y.S. 2d 195 (Sup. Ct. 1956), *aff'd mem.*, 2 App. Div. 2d 663, 158 N.Y.S. 2d 306 (1957); *Blumberg v. Hill*, 119 N.Y.S. 2d 855 (1953); 1 RATHKOPF, LAW OF ZONING AND PLANNING, 631 (3d ed. 1956).

42. See cases cited notes 43-47 *infra*.

43. *Heady v. Zoning Bd. of Appeals*, 139 Conn. 463, 94 A. 2d 789 (1953); *Kammerman v. Leroy*, 133 Conn. 232, 50 A.2d 175 (1946).

44. *Elwyn v. City of Miami*, 113 So. 2d 849 (Fla. 1959); *Spaulding v. Bd. of Appeals*, 334 Mass. 688, 138 N.E. 2d 367 (1956); *Hernreich v. Quinn*, 350 Mo. 770, 168 S.W. 2d 1054 (1943); *Paris v. Eisenberg*, 35 Misc. 2d 934, 231 N.Y.S. 2d 189 (1962); *Gerling v. Bd. of Zoning Appeals*, 11 Misc. 2d 871, 167 N.Y.S. 2d 358 (1957), *rev'd on other grounds*, 6 App. Div. 2d 247, 176 N.Y.S. 2d 871 (held that proof of special injury not necessary if land abuts).

45. *Toomey v. Gomerling*, 235 Md. 456, 201 A. 2d 842 (1964).

46. See, e.g., *Jackson's Inc. v. Zoning Bd. of Appeals*, 21 Conn. Supp. 102, 145 A. 2d 241 (1958); *O'Connor v. Bd. of Zoning Appeals*, 140 Conn. 65, 98 A. 2d 515 (1953); *Conaway v. Atlantic City*, 107 N.J.L. 404, 154 A. 2d 6 (1961); *Feldman v. Nassau Shores, Estates, Inc.*, 12 Misc. 2d 607, 172 N.Y.S. 2d 769 (1958).

47. See, e.g., *Bright v. Zoning Bd. of Appeals*, 149 Conn. 698, 183 A. 2d 603 (1961); *Michigan Lake Building Corp. v. Hamilton*, 340 Ill. 284, 172 N.E. 710 (1930); *Building Inspector of Acon v. Bd. of Appeals*, 204 N.E. 2d 296 (Mass. 1965); *Vainas v. Bd. of Appeals*, 337 Mass. 591, 150 N.E. 2d 721 (1958); *Reynolds v. Bd. of Appeals*, 335 Mass. 464, 140 N.E. 2d 491 (1957); *Heath v. Mayor*, 190 Md. 478, 58 A. 2d 896 (1948); *Flynn v. Zoning Bd. of Review*, 77 R.I. 118, 73 A. 2d 808 (1950); *Buckminster v. Zoning Bd. of Review*, 69 R.I. 396, 30 A. 2d 104 (1943).

48. *Pattison v. Corby*, 226 Md. 97, 172 A. 2d 490 (1961), *re-affirmed in* *Marcus v. Montgomery County Council*, 235 Md. 535, 201 A. 2d 777 (1964).

been held in one jurisdiction that those property owners one thousand feet from the property in question were not aggrieved parties, since the mere fact that they had to walk by the proposed service station daily did not sufficiently interfere with their personal or legal rights to qualify them as "persons aggrieved."⁴⁹

Several other decisions also indicate that unless there is a claim that some property right or other legal interest is affected by the granting of a permit to a nearby property owner, a third party will not be accorded the status of an aggrieved party.⁵⁰ For example, a Georgia court has held that where the appellant was situated one-quarter of a mile away, and where his only objection was increased traffic and congestion, his interest was not valuable or substantial enough to qualify him as an aggrieved party.⁵¹ It is obvious that the closer the two parcels of land are geographically, the easier it is for a court to determine the possible adverse effect of one upon the other.⁵²

In conclusion, it appears that a nearby property owner, in order to have the right of appeal, must allege not only close proximity, but also that he has suffered some special or unique injury due to the action of the zoning board.⁵³

The general rule in regard to nonresidents is that they do not have the right to appeal decisions of another district's zoning board.⁵⁴ However, some recent decisions indicate that a few courts are beginning to recognize the interests that a nonresident may have in another district's zoning ordinance. One court has held that even though the appellants were not residents, landowners, or taxpayers of the borough, they, having taken part in the zoning proceedings, had the right to appeal

49. *Tucker v. Zoning Bd. of Appeals*, 151 Conn. 510, 199 A. 2d 685 (1964); see also *Tyler v. Bd. of Zoning Appeals*, 145 Conn. 655, 145 A. 2d 832 (1958); *Greenwich Gas Co. v. Tuthill*, 113 Conn. 684, 155 Atl. 850 (1931).

50. *Point Lookout Civic Ass'n v. Town of Hempstead*, 22 Misc. 2d 757, 200 N.Y.S. 2d 925 (1961); see also cases cited note 66 *infra*.

51. *Victoria Corp. v. Atlanta Merchandise Mart, Inc.*, 101 Ga. App. 163, 112 S.E. 2d 793 (1960).

52. *222 East Chestnut Street Corp. v. Bd. of Appeals*, 10 Ill. 2d 132, 139 N.E. 2d 218 (1956). In Connecticut, where the sale of liquor is involved, every resident or taxpayer is deemed to have sufficient interest to appeal from a zoning board's decision.

53. See, e.g., *Wilkinson v. Atkinson*, 218 A. 2d 503 (Md. 1966); *Krejpcio v. Zoning Bd. of Appeals*, 211 A. 2d 687 (Conn. 1965).

54. See, e.g., *Kimberly v. Town of Madison*, 127 Conn. 409, 17 A. 2d 504 (1941); *Wood v. Freeman*, 43 Misc. 2d 616, 251 N.Y.S. 2d 996 (1964); *Browning v. Bryant*, 178 Misc. 576, 34 N.Y.S. 2d 280, *aff'd mem.* 264 App. Div. 777, 34 N.Y.S. 2d 729 (1942); *Village of Russell Gardens v. Bd. of Zoning Appeals*, 30 Misc. 2d 392, 219 N.Y.S. 2d 501 (1961); *Hamelin v. Zoning Bd.*, 19 Conn. Supp. 455, 117 A. 2d 86 (1960).

because of the interest shown by their participation.⁵⁵ Furthermore, a lower New Jersey court pointed out that ". . . the public health, morals and welfare are not limited by the boundaries of any particular zoning district, . . . and even property outside a municipality, if benefited by the prohibited use, acquires a *vested right* to the benefits . . ." arising from the zoning ordinance.⁵⁶ On appeal, the New Jersey Supreme Court affirmed the lower court's decision and stated that a municipality owes a duty to allow court review to the residents of adjoining towns who may be adversely affected by a zoning change.⁵⁷

It would appear that a nonresident, if he can allege and prove specific damages as a result of an adjoining district's action, should have the right to appeal. This would seem especially so if the parcels were in close proximity yet in different zoning areas. The mere fact that one is a nonresident should not in itself deny one the right to appeal if other relevant factors can be proven in determining his "aggrieved person" status.

Other third parties who have often attempted to appeal decisions of zoning boards are business competitors. Almost uniformly, the courts have denied the right of court review to those persons whose only objection to the granting of a variance or exception is that it would create business competition.⁵⁸ Thus, if the sole purpose of an appeal is to ward off business competition, the courts will deny the appeal upon the theory that no person has a right to engage in business without competition.⁵⁹ However, in a recent decision, one court has held that the mere fact that one is a business competitor does not altogether disable him from being an aggrieved party, as long as he can prove other adverse elements such as interference with light or air, increased traffic and congestion, or reduced real estate value.⁶⁰ If these other factors can be proved, there appears no reason why a business competitor should be denied the right to review.

55. *Hamelin v. Zoning Bd.*, 19 Conn. Supp. 455, 117 A. 2d 86 (1960).

56. *Borough of Cresskill v. Borough of Dumont*, 28 N.J. Super. 26, 100 A. 2d 182, 191 (1953).

57. *Borough of Cresskill v. Borough of Dumont*, 15 N.J. 238, 104 A. 2d 441 (1954).

58. See, e.g., *Mott's Realty Corp. v. Town Plan & Zoning Comm.*, 152 Conn. 535, 209 A. 2d 179 (1965); *Whitney Theatre Co. v. Bd. of Zoning Appeals*, 150 Conn. 285, 189 A. 2d 39 (1963); *Zuckerman v. Bd. of Zoning Appeals*, 144 Conn. 160, 128 A. 2d 325 (1956); *Benson v. Zoning Bd. of Appeals*, 129 Conn. 280, 27 A. 2d 389 (1942); *Circle Lounge & Grille, Inc. v. Bd. of Appeals*, 324 Mass. 427, 86 N.E. 2d 920 (1949); *but see Jackson's, Inc. v. Zoning Bd. of Appeals*, 21 Conn. Supp. 102, 145 A. 2d 241 (1958).

59. See, e.g., *Westwood Meat Markets, Inc. v. McLucas*, 146 Colo. 435, 361 P. 2d 776 (1961); *City of Greenbelt v. Jaeger*, 237 Md. 456, 206 A. 2d 694 (1965).

60. *McDermott v. Zoning Bd. of Appeals*, 150 Conn. 510, 191 A. 2d 551 (1963).

The right of a taxpayer to appeal is apparently limited to cases where he can prove special damage, even though he is specifically granted the right of appeal by some state statutes.⁶¹ It does not seem that the taxpayer status alone should qualify one as an aggrieved party without further proof of special injury to his realty, if for no other reason than to reduce the amount of litigation in these matters.

Civic and improvement associations seeking review have generally not been granted the right to appeal, as ordinarily they are neither taxpayers nor aggrieved parties in the sense of owning realty. Where the association does not own any real estate in the zoning district, the courts have denied it the right of review, since one without ownership cannot be adversely affected.⁶² However, if an association does own land separately from that of its members, it is granted the right to appeal.⁶³ Naturally, the civic or improvement association should also be required to prove special injury before being accorded the status of an "aggrieved person."

Thus, in order for a third party to qualify as a "person aggrieved," he must be able to prove some special damage not shared with other property owners in the same general vicinity. The statutes allowing "any person aggrieved" to appeal to the courts has beneficially opened the door to injured third parties, but as in the case of applicants, the statute does not define which third parties have the right of review. As a result the courts have reached conflicting decisions in determining their status.

CONCLUSION

The procedural standing necessary to qualify as an "aggrieved per-

61. See, e.g., *Tyler v. Bd. of Zoning Appeals*, 145 Conn. 655, 145 A. 2d 832 (1958); *City of Fairfax v. Shanklin*, 205 Va. 227, 135 S.E. 2d 773 (1964). The decisions in Maryland indicate that a taxpayer may appeal even without special damage—see, e.g., *Norwood Heights Improvement Ass'n v. Mayor*, 195 Md. 1, 72 A. 2d 1 (1950); *Mayor v. Byrd*, 191 Md. 632, 62 A. 2d 588 (1948); see also *Cowles v. Zoning Bd. of Appeals*, 214 A. 2d 361 (Conn. 1965); *O'Connor v. Bd. of Zoning Appeals*, 140 Conn. 65, 98 A. 2d 515 (1953).

62. See, e.g., *Stocksdale v. Barnard*, 212 A. 2d 282 (Md. 1965); *Norwood Heights Improvement Ass'n v. Mayor*, 195 Md. 1, 72 A. 2d 1 (1950); *Lindenwood Improvement Ass'n v. Lawrence*, 278 S.W. 2d 30 (Mo. 1955); *Feldman v. Nassau Shores Estates, Inc.*, 12 Misc. 2d 607, 172 N.Y.S. 2d 769 (1958); *Property Owners Ass'n of Garden City Estates, Inc. v. Bd. of Zoning Appeals*, 2 Misc. 2d 309, 123 N.Y.S. 2d 716 (1953); *Underhill v. Bd. of Appeals*, 17 Misc. 2d 257, 72 N.Y.S. 2d 588 (1947), *aff'd in* 273 App. Div. 788, 75 N.Y.S. 2d 327, *aff'd in* 297 N.Y. 937, 80 N.E. 2d 342 (1948).

63. *Putney v. Abington Township*, 70 Montg. 102, *aff'd in*, 176 Pa. Super. 463, 108 A. 2d 134 (1954).

son" thus depends either upon the legal or equitable interests that one holds in the affected property; or, if a third party, the incurrence of some special damage to his property as a result of a zoning decision upon another's land. Although most courts do not emphasize economic considerations, the trend is that such economic factors are becoming more relevant in determining whether a party is in fact aggrieved.

It appears that the courts are searching for a compromise between too much judicial review and too little. The necessity of judicial review should not be considered lightly, especially when one realizes the broad powers granted to zoning boards and administrators. An individual property owner must have available safeguards against any arbitrary decisions that might infringe upon the use or enjoyment of his property, or decrease its value. The "aggrieved person" requirement in zoning is just such a safeguard, and its interpretation by the courts is of no minor importance. Thus if a party can show that he is being damaged in any substantial way by a zoning decision, the courts should liberally construe the "aggrieved person" requirement so as to bring the individual property owner within the scope of the statute.

Perhaps the best solution to the conflicting decisions, caused by the vagueness of the present statutes, would be to have the state legislature define more specifically the requirements necessary to qualify as an "aggrieved party." This would only require a small addition to the present provisions, and such an amendment would greatly aid the courts in determining the procedural standing that a party must have. By not being given any standard to guide them in interpreting the "aggrieved person" status, the courts are developing their own criteria in an area that is supposedly controlled by statutory enactments. Thus, in order to insure that all individuals are being treated equally, definite uniform standards should be formulated to describe the elements necessary to qualify as an "aggrieved person."

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