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Standing To Appeal Zoning Determinations: The "Aggrieved Person" Requirement

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COMMENTS

Standing To Appeal Zoning Determinations: The "Aggrieved Person" Requirement

During the twentieth century the states have increasingly utilized their police power to control the use of land.[1] All fifty states have now enacted zoning enabling legislation,[2] much of which is based in whole or in part on the Standard State Zoning Enabling Act.[3] Typically, these zoning acts, like the Standard Act, empower municipalities[4] to promulgate land use regulations by dividing the municipality "into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act . . . ."[5] Most zoning acts specify that "all such regulations shall be *uniform* for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts."[6]

Despite the desire for uniform land regulation, however, a number of "safety valves" have been incorporated into zoning procedures to provide for necessary diversity and to ensure fairness in the implementation of zoning regulations.[7] One of the most important of these is the "board of adjustment,"[8] which has the power to grant

1. See, *e.g.*, Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); City of Aurora v. Burns, 319 Ill. 84, 149 N.E. 784 (1925); *cf.* Brandon v. Board of Comm'rs, 124 N.J.L. 135, 142-43, 11 A.2d 304, 309 (Sup. Ct.), *aff'd*, 125 N.J.L. 367, 15 A.2d 598 (Ct. Err. & App. 1940).

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

3. The STANDARD STATE ZONING ENABLING ACT (hereinafter cited as STANDARD ACT) was sponsored by the United States Department of Commerce. Originally published in 1924, it is now out of print, but is reproduced at 3 RATHKOPF, ZONING AND PLANNING 100-1 to -6 (3d ed. 1956).

4. Over half the states also authorize counties or townships to enact zoning regulations. See, *e.g.*, MICH. COMP. LAWS §§ 125.201-.232, 125.271-.301 (1948), as amended, MICH. COMP. LAWS §§ 125.201-.218, 125.272-.298 (Supp. 1961).

5. STANDARD ACT § 2. See, *e.g.*, ALASKA STAT. ANN. § 29.10.219 (1962); IOWA CODE ANN. § 414.2 (1949).

6. STANDARD ACT § 2. (Emphasis added.) See, *e.g.*, ARIZ. REV. STAT. ANN. § 9-461C (1956); KY. REV. STAT. § 100.067(2) (1962).

7. See V. F. Zahodiakin Eng'r Corp. v. Zoning Bd. of Adjustment, 8 N.J. 386, 86 A.2d 127 (1952); Guenther v. Zoning Bd. of Review, 85 R.I. 37, 125 A.2d 214 (1956); Azalea Corp. v. City of Richmond, 201 Va. 636, 112 S.E.2d 862 (1960).

8. See STANDARD ACT § 7; ARK. STAT. ANN. § 19-2816 (1956); GA. CODE ANN. § 69-815 (1957). Some statutes refer to this body as the Board of Appeals. See Van Auken v. Kimmey, 141 Misc. 105, 252 N.Y.S. 329 (Sup. Ct. 1930). Others title it the Zoning Board of Review. See Buckminster v. Zoning Bd. of Review, 69 R.I. 396, 33 A.2d 199 (1943).

For the general functions of such boards, see 2 RATHKOPF, *op. cit. supra* note 3, at 37-1 to -12. See also Anderson, *The Board of Zoning Appeals—Villain or Victim?*, 13 SYRACUSE L. REV. 353 (1962); Dukeminier & Stapleton, *The Zoning Board of Adjustment: A Case Study in Misrule*, 50 KY. L.J. 273 (1962); McSwain, *The Zoning Board of Adjustment*, 13 BAYLOR L. REV. 21 (1961); Souter, *Zoning Appeals—How a Board of Zoning Appeals Functions*, Mich. S.B.J., May 1961, p. 26.

such "variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done."[9] Moreover, in appropriate cases the board may make special exceptions to the terms of a zoning ordinance.[10]

Before an individual can obtain a variance or special exception, he must first apply for a permit from a building inspector to undertake the desired action. Since the building inspector has no power to grant a variance, this preliminary requirement appears unnecessary when it is clear that the contemplated use is outside the standards of the ordinance; the inspector can issue a permit only if he finds that the contemplated land use is in fact permitted by the terms of the ordinance.[11]

If the building permit is denied for any reason, the applicant generally has the right to appeal to the board of adjustment as a "person aggrieved . . . by any decision of the administrative officer."[12] The board is then required to hold hearings on the denial of the permit and to determine whether a variance should be granted. If the requested variance is denied by the board, the applicant may appeal, as a person aggrieved, to a proper court.[13] On the other hand, if the variance is granted by the board, third parties may qualify as persons aggrieved and may litigate the issue in court.[14] "Aggrieved person," however, is not defined by the statutes. Consequently, it has been left to the courts to delineate the standards which govern the status of an applicant or a third party as an aggrieved person entitled to appeal. It is the purpose of this discussion to examine the requirements for applicants and for third parties to have standing as persons aggrieved by decisions of the

9. *E.g.*, STANDARD ACT § 7; NEV. REV. STAT. § 278.290(1)(C) (1963). In some states the power to grant variances may be given to the local governing body. See Dallstream and Hunt, *Variations, Exceptions and Special Uses*, 1954 U. ILL. L.F. 213.

10. *E.g.*, STANDARD ACT § 7; TENN. CODE ANN. § 13-706 (1955). For the distinction between a variance and an exception or a special use permit, see Devereux Foundation, Inc., 351 Pa. 478, 483-86, 200 Atl. 517, 521 (1945).

11. See, *e.g.*, City of Yuba City v. Chernivasky, 117 Cal. App. 568, 4 P.2d 299 (1931); Jennings v. Connecticut Light & Power Co., 140 Conn. 650, 103 A.2d 535 (1954); Boardwalk & Seashore Corp. v. Murdock, 175 Misc. 208, 22 N.Y.S.2d 611 (Sup. Ct. 1940).

12. STANDARD ACT § 7. See, *e.g.*, FLA. STAT. ANN. § 176.11 (1943); N.Y. VILLAGE LAW § 179-b. A number of statutes specifically provide for an appeal to the board by "any person aggrieved by his inability to obtain a building permit." *E.g.*, NEV. REV. STAT. § 278.310(1)(a) (1931); PA. STAT. ANN. tit. 16, § 5230 (1956). Thus, in most states, appeals to the board are generally based on the refusal of a building inspector to issue a permit. See Kelley v. Board of Zoning Appeals, 126 Conn. 648, 650, 13 A.2d 675, 676 (1940).

13. See, *e.g.*, STANDARD ACT § 7; N.Y. VILLAGE LAW § 179-b.

14. See STANDARD ACT § 7.

administrative officer and the board of adjustment,[15] and to consider the validity of some of the factors that have been emphasized by the courts in resolving the issue.

I. Permit Applicants as Aggrieved Persons

In general, the courts have not provided meaningful indicia as to the degree or kind of interest that an applicant must have to qualify as an aggrieved person. This judicial vagueness can be attributed in part to the fact that variance appeals are generally concerned solely with the basis of the denial; the standing of the appellants is assumed to be proper. When the standing issue is raised, however, it appears that two principal factors are relied upon to determine whether an applicant is a person aggrieved. First, the appellant must show some substantial legal or equitable incident of "ownership" in the property in question; second, he must show a significant economic interest in the outcome of the variance proceeding.[16]

In a majority of the decisions, it is the "legal or equitable interest" factor that has received primary consideration. In fact, most courts have held that even though a substantial economic interest is manifest, a party lacking a cognizable legal interest cannot be considered "aggrieved."[17] It would seem, however, that economic factors should be given greater stress, especially in circumstances where the legal or equitable interest in the property is slight but the outcome of the litigation may have substantial economic effects. On the other hand, if a person has no interest in the property, he will not and should not be granted status as an aggrieved party.[18]

The effect of the two factors—legal and economic—can best be illustrated by a consideration of the various situations in which an applicant may become an aggrieved party. The problem arises, of course, when the possessor of some interest in the property in question applies for a permit or a variance and it is denied.[19]

15. The requirements for being aggrieved by decisions of the zoning board of adjustment or by the zoning officer overlap with, but are not identical to, the requirements for being aggrieved by *local legislative action* through enactment or amendment of the ordinance. The latter issue is not dealt with as such by this discussion, although the question is present in a few of the cases cited.

16. A few courts, however, adopt neither a legal nor an economic analysis. Instead, any applicant who is refused a permit is automatically "aggrieved." See Smith v. Selligman, 270 Ky. 69, 109 S.W.2d 14 (1937); Buckminster v. Zoning Bd. of Review, 68 R.I. 515, 30 A.2d 104 (1943).

17. See, *e.g.*, Chad Homes, Inc. v. Board of Appeals, 5 Misc. 2d 20, 159 N.Y.S.2d 383 (Sup. Ct. 1957); Kuznowski v. Board of Zoning Appeals, 53 Lack. Jur. 53 (Pa. C.P. 1952).

18. Krieger v. Scott, 4 N.J. Misc. 942, 134 Atl. 901 (Sup. Ct. 1926) (per curiam); Dimitri v. Zoning Bd. of Review, 61 R.I. 325, 200 Atl. 963 (1938).

19. It is possible for an applicant to become aggrieved upon the *approval* of a variance. This occurs when the board grants the variance but attaches objectionable conditions. See Rand v. City of New York, 3 Misc. 2d 769, 155 N.Y.S.2d 753 (Sup. Ct. 1956).

A. *Property Owners*

One who owns property outright and is denied a permit or variance clearly has standing to appeal, since fee ownership carries with it the highest degree of both legal and economic implications. Indeed, the rule granting a property owner standing is so well established that few direct statements have been enunciated on this point. The major support for the rule comes from decisions that a person is a property owner *and* an aggrieved party,[20] or inferentially from cases allowing appeals by an agent of the owner or by a prospective vendee.[21] For example, in *Dunham v. Zoning Bd.*[22] the court ruled that it was unnecessary to decide whether a conditional vendee had a sufficient interest in the property to apply for a special exception, since "the application in question was also made, signed and prosecuted personally before the board by the owner of the land whose right under the ordinance to apply for such an exception is not questioned."[23]

B. *Agents of Property Owner*

An application of ordinary rules of agency would seem to require that an agent be held to possess, for the purpose of determining standing, whatever interest his principal has in the property. Although few courts have ruled directly on the question, it seems clear that an agent of the fee owner may be an aggrieved party. For example, it has been held that a construction company[24] or an architect[25] may appeal in the capacity of "agent for the owner," and other courts have viewed successors in interest during the pendency of the application[26] or conditional vendees[27] as persons aggrieved. Generally, the courts have found the requisite interests on the theory that the party in question is an implied agent of the owner. Furthermore, at least one court has held a "straw man" to be a person aggrieved, on the theory that he was a fiduciary for the true owner.[28] It would appear, therefore, that standing to appeal should be granted to an agent whenever his principal, whether or not he is the outright owner of the property, could himself qualify as an aggrieved party.

20. See, *e.g.*, Scholl v. Yeadon Borough, 148 Pa. Super. 601, 26 A.2d 135 (1942).
21. See cases cited notes 24-28, 34-41 *infra*.
22. 68 R.I. 88, 26 A.2d 614 (1942).
23. *Id.* at 92, 26 A.2d at 616.
24. Stout v. Jenkins, 268 S.W.2d 643 (Ky. 1954).
25. Protomastro v. Board of Adjustment, 3 N.J. Super. 539, 67 A.2d 231 (Super. Ct. L. 1949), *rev'd on other grounds*, 3 N.J. 494, 70 A.2d 873 (1950).
26. Feneck v. Murdock, 16 Misc. 2d 789, 181 N.Y.S.2d 441 (Sup. Ct. 1958).
27. Arant v. Board of Adjustment, 271 Ala. 600, 126 So. 2d 100 (1960); Slater v. Toohill, 276 App. Div. 850, 93 N.Y.S.2d 153 (1949) (memorandum decision); 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).
28. Dion v. Board of Appeals, 344 Mass. 547, 183 N.E.2d 479 (1962).

C. *Lessees*

In *Nicholson v. Zoning Bd. of Adjustment*,[29] the Pennsylvania Supreme Court pointed out that a tenant occupies "a status which permits him to apply for a variance and . . . he is a 'party aggrieved' within the meaning of that term as used in the Enabling Acts and ordinances enacted pursuant to them."[30] The implication of the *Nicholson* case is that a tenant or lessee always has sufficient economic and legal interests in the property to qualify as an aggrieved party. While *Nicholson* represents the majority view,[31] a few cases have come to the contrary conclusion. Thus, it has been held that if a lessee's interest is based on an oral lease,[32] or a tenancy at will,[33] he cannot be granted standing. The validity of such distinctions is doubtful, because the degree of legal interest in a leasehold is the same regardless of whether it is based upon an oral contract, a written contract, a tenancy at will, or a tenancy for a definite period. Moreover, the economic interest in the leasehold does not depend upon the type of contract employed. Even where the lessee under an oral lease is viewed as holding a *de minimis* legal property interest, it does not necessarily follow that he has an insubstantial economic interest in the property. Consequently, if substantial fairness is to be maintained in the administration of zoning regulations, it would seem better to allow a tenant to appeal an adverse ruling whenever he has an overriding economic interest in the outcome of the variance application. Thus, the length of the unexpired term of the lease should be considered as a factor, although not a conclusive one, in the determination of the lessee's standing. As a result, even a *written* lease might not support the lessee's standing to appeal if it had only a short time to run and no renewal option.

D. *Contract Vendees*

The courts have had difficulty in determining whether a purchaser under a contract should be granted status as an aggrieved person. In general, it appears that the judiciary will not look through the form of the contract to examine the real interests involved in the appeal. If the contract is unconditional, the vendee will be

29. 392 Pa. 278, 140 A.2d 604 (1958).

30. *Id.* at 282, 140 A.2d at 606.

31. See, *e.g.*, Poster Advertising Co. v. Zoning Bd. of Adjustment, 408 Pa. 248, 182 A.2d 521 (1962); Richman v. Zoning Bd. of Adjustment, 391 Pa. 254, 137 A.2d 280 (1958); Ralston Purina Co. v. Zoning Bd., 64 R.I. 197, 12 A.2d 219 (1940).

A cotenant may attack the validity of a zoning ordinance in his own behalf. Jones v. Incorporated Village of Lloyd Harbor, 277 App. Div. 1124, 100 N.Y.S.2d 948 (1950), *aff'd mem.*, 302 N.Y. 718, 98 N.E.2d 589 (1951).

32. *In re* McLaughlin, 42 Del. Co. 388 (Pa. C.P. 1955). See also Bloom v. Wides, 164 Ohio St. 138, 128 N.E.2d 31 (1955).

33. Gallagher v. Zoning Bd. of Review, 186 A.2d 325 (R.I. 1962). See also City of Little Rock v. Goodman, 222 Ark. 350, 260 S.W.2d 450 (1953).

granted standing.[34] When the contract is conditioned upon the securing of a zoning variance or exception, however, the purchaser's qualifications are not as clear. In the majority of cases the courts have allowed such a purchaser to apply for a permit and to appeal a denial thereof as an aggrieved party.[35] Normally, this result is reached by regarding the conditional vendee as the agent or assignee of the owner,[36] or as an equitable owner.[37] On the other hand, a few courts have impliedly dropped the "legal or equitable interest" analysis and have held that a conditional vendee has a sufficient personal economic interest in the property to support his standing to appeal.[38] For example, the Supreme Court of Ohio has stated that "it is enough that an application was made for a permit to use this property for a filling station, by one having a contingent interest in using the property for that purpose . . . ."[39] In addition, several courts have used the fact that the owner joined in the application[40] or gave his consent and approval[41] as a makeweight for allowing the conditional purchaser to appeal as a person aggrieved.

In a few decisions the contract vendee has been denied standing as an aggrieved party because he did not have a sufficient present interest in the property to enable him to seek a use change in the

34. See, *e.g.*, Goldreyer v. Board of Zoning Appeals, 144 Conn. 641, 136 A.2d 789 (1957); Sigretto v. Board of Adjustment, 134 N.J.L. 587, 50 A.2d 492 (Sup. Ct. 1946); Mandalay Constr., Inc. v. Zimmer, 22 Misc. 2d 543, 194 N.Y.S.2d 404 (Sup. Ct. 1959); Henry Norman Associates, Inc. v. Ketler, 16 Misc. 2d 764, 183 N.Y.S.2d 875 (Sup. Ct. 1959); Elkins Park Improvement Ass'n Zoning Case, 361 Pa. 322, 64 A.2d 783 (1949); Scheer v. Weis, 13 Wis. 2d 408, 108 N.W.2d 523 (1961).

35. *E.g.*, Arant v. Board of Adjustment, 271 Ala. 600, 126 So. 2d 100 (1960); 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); Burr v. Keene, 105 N.H. 228, 196 A.2d 63 (1963).

36. Arant v. Board of Adjustment, 271 Ala. 600, 126 So. 2d 100 (1960); Wilson v. Township Comm., 123 N.J.L. 474, 9 A.2d 771 (Sup. Ct. 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); Colony Park, Inc. v. Malone, 25 Misc. 2d 1072, 205 N.Y.S.2d 166 (Sup. Ct. 1960); State *ex rel.* Waltz v. Independence, 69 Ohio L. Abs. 445, 125 N.E.2d 911 (Dist. Ct. App. 1952).

37. Hickox v. Griffin, *supra* note 36; O'Neill v. Philadelphia Zoning Bd. of Adjustment, 384 Pa. 379, 120 A.2d 901 (1956); Silverco, Inc. v. Zoning Bd. of Adjustment, 379 Pa. 497, 109 A.2d 147 (1954).

38. *E.g.*, City of Baltimore v. Cohn, 204 Md. 523, 105 A.2d 482 (1954); Carson v. Board of Appeals, 321 Mass. 649, 75 N.E.2d 116 (1947); Colony Park, Inc. v. Malone, 25 Misc. 2d 1072, 205 N.Y.S.2d 166 (Sup. Ct. 1960); State *ex rel.* Sun Oil Co. v. City of Euclid, 164 Ohio St. 265, 130 N.E.2d 336 (1955), see State *ex rel.* River Grove Park, Inc. v. City of Kettering, 118 Ohio App. 143, 193 N.E.2d 547 (1962).

39. State *ex rel.* Sun Oil Co. v. City of Euclid, *supra* note 38, at 269, 130 N.E.2d at 339.

40. Marinelli v. Board of Appeal 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); Jersey Triangle Corp. v. Board of Adjustment, 127 N.J.L. 194, 21 A.2d 845 (Sup. Ct. 1941); State *ex rel.* Sun Oil Co. v. City of Euclid, 164 Ohio St. 265, 130 N.E.2d 336 (1955).

41. Wilson v. Township Comm., 123 N.J.L. 474, 9 A.2d 771 (Sup. Ct. 1939); Slamowitz v. Jelleme, 3 N.J. Misc. 1169, 130 Atl. 833 (Sup. Ct. 1925); Stoll v. Gulf Oil Corp., 79 Ohio L. Abs. 145, 155 N.E.2d 83 (C.P. 1958); Elvan v. Exley, 58 Pa. D. & C. 538 (C.P. 1947).

first place; therefore, he could not be aggrieved by the denial of an application.[42] In addition, some courts which would otherwise grant the applicant the status of an appellant distinguish between variance applicants and persons applying for other types of permits. Since many statutes require an applicant for a variance to show "unnecessary hardship,"[43] it has been reasoned that a vendee who knowingly acquires land with the expectation of using it for a prohibited purpose cannot thereafter apply for a variance, because his hardship is self-inflicted.[44] However, reliance on this distinction seems unwarranted. In the first place, the question of unnecessary hardship should not even arise until the merits of the variance application are reached. Second, since the owner-vendor clearly has standing as an aggrieved party, his vendee should also be entitled to aggrieved-party status. In effect, the vendee should be considered as having purchased this important right as a part of the normal incidents of property ownership. A few courts have impliedly adopted this position.[45]

E. *Option Holders*

Many jurisdictions view the holder of an option to purchase as having a mere right of choice granted by his option rather than a present legal interest in the property.[46] Consequently, the optionee of property for which a variance or other use permit is sought and refused is generally not regarded as an aggrieved party.[47] However, some courts, adopting what appears to be the better reasoning,[48] make no distinction between an optionee and a vendee whose contract is conditioned upon the securing of a variance. Since each is considered to be acting at least impliedly on behalf of the owner,

42. *E.g.*, Symonds v. Bucklin, 197 F. Supp. 682 (D. Md. 1961); Minney v. City of Azusa, 164 Cal. App. 2d 12, 330 P.2d 255 (1958), *appeal dismissed*, 359 U.S. 436 (1959); see Clark Oil & Ref. Corp. v. City of Evanston, 23 Ill. 2d 48, 177 N.E.2d 191 (1961). *Compare* Sun Oil Co. v. Macauley, 72 R.I. 206, 49 A.2d 917 (1946), *with* State *ex rel.* River Grove Park, Inc. v. City of Kettering, 118 Ohio App. 143, 193 N.E.2d 547 (1962).

43. See, *e.g.*, STANDARD ACT § 7; KY. REV. STAT. ANN. § 100.076 (1962) (exceptional situations or conditions); N.Y. VILLAGE LAW § 179-b.

44. See Clark v. Board of Zoning Appeals, 301 N.Y. 86, 92 N.E.2d 903 (1950), *cert. denied*, 340 U.S. 933 (1951); People *ex rel.* Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 155 N.E. 575 (1927); McNichol v. Gallagher, 66 Pa. D. & C. 338 (C.P. 1948).

45. See, *e.g.*, Slater v. Toohill, 276 App. Div. 850, 93 N.Y.S.2d 153 (1949) (memorandum decision); Hickox v. Griffin, 274 App. Div. 972, 79 N.Y.S.2d 193 (1948), *rev'd on other grounds*, 298 N.Y. 365, 83 N.E.2d 836 (1949). See also Gray v. Board of Supervisors, 154 Cal. App. 2d 700, 316 P.2d 678 (1957) (permit for church erection); City of Baltimore v. Cohn, 204 Md. 523, 105 A.2d 482 (1954) (special exception); O'Neill v. Philadelphia Zoning Bd. of Adjustment, 384 Pa. 379, 120 A.2d 901 (1956) (permit for dancing school).

46. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946); see Parise v. Zoning Bd. of Review, 92 R.I. 338, 168 A.2d 476 (1961).

47. See, *e.g.*, Parise v. Zoning Bd. of Review, *supra* note 46; Tripp v. Zoning Bd. of Review, 84 R.I. 262, 123 A.2d 144 (1956). See also First Nat'l Bank & Trust Co. v. City of Evanston, 53 Ill. App. 2d 321, 203 N.E.2d 6 (1964).

48. See 2 RATHKOPF, *op. cit. supra* note 3, at 40-6.

both qualify as aggrieved parties whenever the owner could so qualify.[49] In any case, the decisions on point all indicate that if the legal owner joins in the original application, the holder of an option on the property will be allowed to appeal from a denial of the application.[50]

F. *Others*

As previously stated,[51] if both the legal and economic interests of a person in the property in question are lacking or ambiguous, standing to appeal as an aggrieved party will generally be denied. The courts vary, however, in the strictness of their attitude toward the requirement of the presence of *both* factors. Standing to appeal has been refused, for example, when an airplane club applied for a variance to permit the operation of an airfield on property in which it had no title or interest,[52] and when a theatrical group sought a variance for land on which it merely intended to submit a bid.[53] Apparently, courts denying standing to appeal in such situations require the prospective appellant to have not only an economic interest in the property but also a legal or equitable interest.

On the other hand, a few courts seem to have placed less weight on the property interest and have relied more extensively on economic considerations. For instance, in one case an insurance company was allowed to appeal to the board from a denial of a repair permit to the owner, where the building had been damaged and the denial of the permit made the insurer liable for a constructive total loss.[54] Looking at the economic impact upon the insurance company of the denial of the repair permit, the court held that a decision which had the effect of increasing the company's liability qualified it as an aggrieved party.[55] Another recent decision allowed a non-owner to apply for rezoning of a lot upon which he intended to construct an office building.[56]

49. See Babitzke v. Village of Harvester, 32 Ill. App. 2d 289, 177 N.E.2d 644 (1961); Hatch v. Fiscal Court, 242 S.W.2d 1018 (Ky. 1961); Smith v. Selligman, 270 Ky. 69, 109 S.W.2d 14 (1937). *But see* Arant v. Board of Adjustment, 271 Ala. 600, 126 So. 2d 100 (1960); Conery v. City of Nashua, 103 N.H. 16, 164 A.2d 247 (1960).

50. See, *e.g.*, Cranston Jewish Center v. Zoning Bd. of Review, 93 R.I. 364, 175 A.2d 296 (1961); Dunham v. Zoning Bd., 68 R.I. 88, 26 A.2d 438 (1942); *cf.* Hickerson v. Flannery, 42 Tenn. App. 329, 302 S.W.2d 508 (1956).

51. See text accompanying notes 17-18 *supra*.

52. Underhill v. Board of Appeals, 17 Misc. 2d 257, 72 N.Y.S.2d 588 (Sup. Ct.), *aff'd*, 273 App. Div. 788, 75 N.Y.S.2d 327 (1947), *aff'd mem.*, 297 N.Y. 937, 80 N.E.2d 342 (1948).

53. Schaeffer Appeal, 7 Pa. D. & C.2d 468 (C.P. 1956).

54. State *ex rel.* Home Ins. Co. v. Burt, 23 Wis. 2d 231, 127 N.W.2d 270 (1964).

55. "Under the facts of the instant action, the insurers stand to lose over $21,000 as a result of the ruling of the board, which has the effect of turning a $6,337.04 partial loss into a constructive total loss, requiring the insurers to pay $28,000, the full amount of the policies. The city's contentions on this point are without merit, for the insurance companies are clearly 'persons aggrieved' . . . ." *Id.* at 238, 127 N.W.2d at 273.

56. Binford v. Western Elec. Co., 219 Ga. 404, 133 S.E.2d 361 (1963).

In the majority of cases, however, the courts will still strive to find some legal or equitable interest even when there are compelling economic considerations in the particular circumstances of the case. Thus, standing to appeal has been granted where it appears, other than from the record, that the appellant already is or intends to become the owner of the property.[57] Moreover, if the owner originally joined in the application, an appeal may be allowed by a person who could not himself qualify as aggrieved.[58] In *Feneck v. Murdock*,[59] for example, a corporation which had applied for a variance was subsequently dissolved pending the hearing before the board. Nevertheless, the principal stockholders were allowed to continue the application.[60]

It would appear, therefore, that many courts have accorded "aggrieved party" status to individuals who would not normally be regarded as possessing substantial attributes of a legal interest in the property in question. However, it is incumbent upon the appealing party to plead the special facts of his particular situation if he is not the legal owner of the property involved in the application.

II. Third Parties as Persons Aggrieved

When a board of adjustment *grants* a variance, the applicant generally would have no reason to appeal to a court.[61] However, the result may be objectionable to persons other than the applicant. Third parties will be permitted to appeal to the courts as persons aggrieved[62] if they can "show that . . . [their] property will suffer some special damages as a result of the decision of the board complained of, which is not common to other property owners similarly

57. See, *e.g.*, Board 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).

58. See Marinelli v. Board of Appeal of the Bldg. Dep't, 275 Mass. 169, 175 N.E. 479 (1931) (conditional vendee); Jersey Triangle Corp. v. Board of Adjustment, 127 N.J.L. 194, 21 A.2d 845 (Sup. Ct. 1941) (conditional vendee); *cf.* Taxpayers' Ass'n v. Board of Zoning Appeals, 301 N.Y. 215, 93 N.E.2d 645 (1950) (property owners' association).

59. 16 Misc. 2d 789, 181 N.Y.S.2d 441 (Sup. Ct. 1958).

60. The corporation was held to be the agent of its stockholders; when it applied for a variance and conveyed the land to its principals, the variance ran with the land. See *id.* at 792, 181 N.Y.S.2d at 445.

61. *Cf.* note 19 *supra*.

62. Many courts define persons aggrieved as including landowners or *residents* who are adversely affected. *E.g.*, Jackson's Inc. v. Zoning Bd. of Appeals, 21 Conn. Supp. 102, 145 A.2d 241 (C.P. 1958). The breadth of the statutes varies. *E.g.*, Ky. Rev. Stat. Ann. § 100.480 (1962) ("any property owner or tenant") (cities of 20,000-100,000 population), § 100.872 ("any person, firm, corporation, organization") (cities of under 20,000 population). In Illinois, any property owner not given notice of a variance proceeding may appeal if he lives within 250 feet of the property in question. Ill. Ann. Stat. ch. 24, § 11-13-7 (Smith-Hurd 1962). Many statutes also allow any *taxpayer* to appeal. For the limited effect given some of these provisions, see text accompanying notes 102-11 *infra*.

situated."[63] Like the standards for an applicant to qualify as a person aggrieved, the standards for third parties have never been clearly specified. However, it appears that the courts attempt to justify the standing of third parties as a necessary counterbalance to the standing of applicants.[64] Since zoning statutes almost uniformly provide for the inclusion of the general public in hearings before the board,[65] it seems logical to assume that these same parties should, in some instances, be allowed to have their positions heard before a court. Although courts often speak of individual loss as a necessary prerequisite to a third party's standing to appeal as a person aggrieved, the actual test employed seems to vary from case to case.

A. *Nearby Property Owners*

A nearby landowner normally has standing as an aggrieved person. In fact, one commentator has referred to such property owners as private attorneys general asserting the public interest.[66] If the property owner's land abuts the land in question, the mere fact of proximity, without further proof of special damage, has often been sufficient to support his appeal.[67] If he does not abut, however, the requirements for standing may be more stringent.[68] It appears that a non-abutting property owner must allege both proximity and special damage for prima facie status as an aggrieved person.[69] To satisfy the "special damage" element, the third-party appellant must suffer some injury peculiar to his own property or more substantial

63. Victoria Corp. v. Atlanta Merchandise Mart, Inc., 101 Ga. App. 163, 112 S.E.2d 793, 795 (1960); see Downey v. Incorporated Village of Ardsley, 152 N.Y.S.2d 195 (Sup. Ct. 1956), *aff'd mem.*, 3 App. Div. 2d 663, 158 N.Y.S.2d 306 (1957).

64. See generally Krasnowiecki, *Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control*, 114 U. PA. L. REV. 47, 55-63 (1965); *cf.* BASSETT, ZONING 154 (1940).

65. STANDARD ACT § 7: "All meetings of the board shall be open to the public." See, *e.g.*, OKLA. STAT. ANN. tit. 11, § 407 (1959); UTAH CODE ANN. § 10-9-8 (1953).

66. See Krasnowiecki, *supra* note 64, at 60.

67. See, *e.g.*, Heady v. Zoning Bd. of Appeals, 139 Conn. 463, 94 A.2d 789 (1953); Elwyn v. City of Miami, 113 So. 2d 849 (Fla. Dist. Ct. App. 1959); Hernreich v. Quinn, 350 Mo. 770, 168 S.W.2d 1054 (1943); Lynch v. Borough of Hillsdale, 136 N.J.L. 129, 54 A.2d 723 (Sup. Ct. 1947), *aff'd per curiam*, 137 N.J.L. 280, 59 A.2d 622 (Ct. Err. & App. 1948). *But cf.* Barnathan v. Garden City Park Water Dist., 21 App. Div. 2d 832, 251 N.Y.S.2d 706 (1964).

68. See Heady v. Zoning Bd. of Appeals, *supra* note 67; Call Bond & Mortgage Co. v. City of Sioux City, 219 Iowa 572, 259 N.W. 33 (1935); Wright v. DeFatta, 244 La. 251, 152 So. 2d 10 (1963); Toomey v. Gomeringer, 235 Md. 456, 201 A.2d 842 (1964); Spaulding v. Board of Appeals, 334 Mass. 688, 138 N.E.2d 367 (1956); Gerling v. Board of Zoning Appeals, 11 Misc. 2d 84, 167 N.Y.S.2d 358 (Sup. Ct. 1957); Graves v. Johnson, 75 S.D. 261, 63 N.W.2d 341 (1954).

69. See Treadway v. City of Rockford, 24 Ill. 2d 488, 182 N.E.2d 219 (1962); Malena v. Commerdinger, 233 N.Y.S.2d 549 (Sup. Ct. 1962); Balsam v. Jagger, 231 N.Y.S.2d 450 (Sup. Ct. 1962); *cf.* Wright v. DeFatta, *supra* note 68, at 264-65, 152 So. 2d at 15, where the damage alleged was a depreciation in value, "droves of kids," and "Negroes loafing on the streets."

than that suffered by the community at large.[70] For example, an increase in traffic as a result of the variance would generally affect all owners similarly situated. Under these circumstances, an individual would be "aggrieved" only if he could show that his property, or his property and that of his immediate neighbors, suffered injuries more substantial than those suffered by the general public.[71] Thus, standing will be denied to non-abutting third parties whose injury is deemed to be *de minimis* because the property is too far away from the land for which a variance has been granted,[72] or if the injury suffered is identical to that suffered by the general community.

B. *Nonresidents*

Most courts have held that nonresidents cannot challenge zoning regulations,[73] even if their property is adjacent to the questioned zoning.[74] For this reason, it has generally been assumed that a third party must reside or own property within the particular community to qualify as an aggrieved person.[75] Despite this authority, however, recent decisions appear to indicate a trend in favor of allowing nonresidents to attack the enactment[76] and application[77] of zoning ordinances and decisions within the neighboring municipality.

The Standard Act provides that zoning regulations "shall be made in accordance with a comprehensive plan,"[78] and the majority of current state zoning enabling acts retain this language.[79] Since rural residence in the United States is declining,[80] it has become apparent

70. See S.A. Lynch Inv. Corp. v. City of Miami, 151 So. 2d 858 (Fla. Dist. Ct. App. 1963); Adams v. The Mayor, 107 N.J.L. 149, 151 Atl. 863 (Ct. Err. & App. 1930); Schultze v. Wilson, 54 N.J. Super. 309, 148 A.2d 852 (Super. Ct. App. Div. 1959); Moore v. Burchell, 14 App. Div. 2d 572, 218 N.Y.S.2d 868, *appeal denied*, 10 N.Y.2d 709, 179 N.E.2d 716, 223 N.Y.S.2d 1026 (1961).

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

72. See Tyler v. Board of Zoning Appeals, 145 Conn. 655, 145 A.2d 832 (1958) (5 miles away); City of Greenbelt v. Jaeger, 237 Md. 456, 206 A.2d 694 (1965) (7½ miles away); Marcus v. Montgomery County Council, 235 Md. 535, 201 A.2d 777 (1964) (¼ mile away); Lampinski v. Rhode Island Racing & Athletics Comm'n, 94 R.I. 438, 181 A.2d 438 (1962) (½ mile away).

73. *E.g.*, Browning v. Bryant, 178 Misc. 576, 34 N.Y.S.2d 280 (Sup. Ct.), *aff'd mem.*, 264 App. Div. 777, 34 N.Y.S.2d 729 (1942).

74. *E.g.*, Village of Russell Gardens v. Board of Zoning and Appeals, 30 Misc. 2d 392, 219 N.Y.S.2d 501 (Sup. Ct. 1961).

75. See Kamerman v. LeRoy, 133 Conn. 232, 237, 50 A.2d 175, 178 (1946); 2 METZENBAUM, ZONING 1039 (2d ed. 1955); 2 RATHKOPF, ZONING AND PLANNING 40-8 (3d ed. 1956).

76. See Koppel v. City of Fairway, 189 Kan. 710, 371 P.2d 113 (1962).

77. See Hamelin v. Zoning Bd., 19 Conn. Supp. 445, 117 A.2d 86 (C.P. 1955); Borough of Leonia v. Borough of Fort Lee, 56 N.J. Super. 135, 151 A.2d 540 (Super. Ct. App. Div. 1959).

78. STANDARD ACT § 3.

79. Fewer than ten states lack provisions for zoning regulations in accordance with a comprehensive plan. See Cunningham, *Land-Use Control—The State and Local Programs*, 50 IOWA L. REV. 367, 371 (1965).

80. In 1960 almost three quarters of the total population of the United States

that the impact of zoning is no longer of concern only to the enacting municipality.[81] Because zoning may have extraterritorial effects, a few courts have interpreted "comprehensive plan" to permit[82] or require[83] the taking into consideration of "regional"[84] factors when zoning ordinances are enacted. In fact, some states have given their cities explicit authority to adopt zoning regulations for areas within a specified distance outside the city limits.[85] Consequently, it would seem that such developments will inevitably lead to the granting of standing as persons aggrieved to affected nonresidents. A few cases illustrate the steps which have already been taken toward this goal.

In 1949 the New Jersey Supreme Court held:

> [T]he most appropriate use of any particular property depends not only on all the conditions, physical, economic and social, prevailing within the municipality and its needs, present and reasonably prospective, but also on the nature of the entire region in which the municipality is located and the use to which the land in that region has been or may be put most advantageously.[86]

Subsequently, in *Borough of Cresskill v. Borough of Dumont*,[87] a lower New Jersey court held that a borough and its residents had standing to challenge an adjoining borough's zoning.[88] On appeal, the New Jersey Supreme Court found it unnecessary to decide the issue, since a resident of the defendant borough was a party to the

lived in "urban" areas. See U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 15 (86th ed. 1965).

81. See Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515 (1957); *cf.* GULICK, THE METROPOLITAN PROBLEM AND AMERICAN IDEAS (1962).

82. See, *e.g.*, Valley View Village, Inc. v. Proffett, 221 F.2d 412, 418 (6th Cir. 1955) ("It is obvious that Valley View, Ohio, on the periphery of a large metropolitan center, is not such a self-contained community, but only an adventitious fragment of the economic and social whole"); Gordon v. City of Wheaton, 12 Ill. 2d 284, 146 N.E.2d 37 (1957); Schwartz v. Congregation Powolei Zeduck, 8 Ill. App. 2d 438, 441, 131 N.E.2d 785, 786 (App. Div. 1956) ("[I]t is not unreasonable to base zoning regulations for one municipality upon the conditions or character of an adjoining municipality.").

83. See, *e.g.*, Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 104 A.2d 441 (1954); Kozesnik v. Township of Montgomery, 24 N.J. 154, 177-78, 131 A.2d 1, 14 (1957) (dictum); Gartland v. Borough of Maywood, 45 N.J. Super. 1, 6, 131 A.2d 529, 532 (Super. Ct. App. Div. 1957) (dictum).

84. "Regional" as used here refers to factors inherent in land outside the municipality which must or should be taken into consideration in order to comply with the requirements of a "comprehensive plan." This is to be distinguished from the type of regional plan put forth by a "regional planning agency." About one-half of the states have such agencies.

85. See, *e.g.*, ILL. ANN. STAT. ch. 24, § 11-13-1 (Smith-Hurd 1962); Petterson v. City of Naperville, 9 Ill. 2d 233, 137 N.E.2d 371 (1956). See also Haar, *supra* note 81, at 527-29; Melli & Devoy, *Extraterritorial Planning and Urban Growth*, 1959 WIS. L. REV. 55.

86. Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 513, 64 A.2d 347, 349-50 (1949).

87. 28 N.J. Super. 26, 100 A.2d 182 (Super. Ct. L. 1953).

88. *Id.* at 43, 100 A.2d at 191.

proceedings.[89] The court pointed out, however, that a municipality is required to give consideration to "residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes."[90] A few years later the implications of this favorable attitude toward nonresident standing were confirmed in another New Jersey decision in which the court held that the right of a municipality to challenge the zoning of a contiguous municipality "is not questioned."[91]

Connecticut courts have also granted a limited right to protest the zoning activities of a neighboring municipality. In *Hamelin v. Zoning Bd.*,[92] residents of the "town"[93] in which the defendant borough was located sought standing to appeal the borough commissioners' orders. The court concluded that those parties who took part in a zoning hearing were aggrieved persons, even though they were neither residents nor taxpayers of the borough itself.[94]

The most liberal extension of nonresident standing in zoning cases can be found in a recent Kansas decision.[95] Under the Kansas protest statute, a zoning amendment protested by twenty per cent of the fronting landowners can be passed only by a four-fifths vote of the city council.[96] The Kansas Supreme Court held that nonresident landowners with land fronting on the area proposed to be altered should have their protests counted toward the twenty per cent objection requirement.[97] Since this decision allows nonresidents to participate in the enactment of zoning amendments, it would appear *a fortiori* that adversely affected nonresidents would have standing as aggrieved persons to contest the administration of the zoning regulations by the board of adjustment.

C. *Business Competitors*

It is uniformly held that a person who objects to the grant of a variance solely on the ground that it will create competition with

89. 15 N.J. 238, 245, 104 A.2d 441, 444 (1954).

90. *Id.* at 247, 104 A.2d at 445.

91. Borough of Leonia v. Borough of Fort Lee, 56 N.J. Super. 135, 139, 151 A.2d 540, 542 (Super. Ct. App. Div. 1959).

92. 19 Conn. Supp. 445, 117 A.2d 86 (C.P. 1955).

93. A New England town is roughly equivalent to what is known as a township in other parts of the country. 32 MUNICIPAL YEAR BOOK 14 (1965).

94. 19 Conn. Supp. at 446, 448, 117 A.2d at 86, 87: "While the plaintiffs are resident taxpayers of the town, none of them are residents, landowners or taxpayers in the borough. . . . We conclude that the plaintiffs who attended the hearing and took part in the proceedings are entitled to have the orders of the borough commission reviewed."

95. Koppel v. City of Fairway, 189 Kan. 710, 371 P.2d 113 (1962).

96. KAN. STAT. ANN. § 12-708 (1964).

97. The four-fifths requirement would have come into play in this case only if the nonresident protests were counted; less than 20% of the resident frontage owners protested, while 90% of the nonresident frontage owners objected.

his business is not "aggrieved."[98] An individual cannot be aggrieved "merely because a variance, even if improvidently granted, will increase competition in [his] business."[99] Any injury to the competitor's business stemming from the variance is viewed as *damnum absque injuria.* Naturally, a competitor could be "aggrieved" if he also had an interest, apart from his business interest, that would be adversely affected. For example, a competitor might own residential property within the zoned area.[100] His standing should therefore be determined by the usual "special damage" inquiry applicable to other third-party appellants.[101]

D. *Taxpayers*

The Standard Act provides that appeals may be taken from the board to the courts by a person aggrieved or by "any taxpayer."[102] Only seventeen states, however, have retained this language.[103] Although such language would seem to imply that any taxpayer may appeal without satisfying the requirements for attaining the status of a "person aggrieved,"[104] only a few courts have so held.[105] In most of the jurisdictions where the language has been retained, the courts have required the taxpayer to show that he was "aggrieved" in some manner.[106] In other words, he must generally show *special damage* to his property.[107]

98. See McDermott v. Zoning Bd. of Appeals, 150 Conn. 510, 191 A.2d 551 (1963); Whitney Theatre Co. v. Zoning Bd. of Appeals, 150 Conn. 285, 189 A.2d 396 (1963); Benson v. Zoning Bd. of Appeals, 129 Conn. 280, 27 A.2d 389 (1942); Ratner v. City of Richmond, 201 N.E.2d 49 (Ind. Ct. App. 1964); Circle Lounge & Grille, Inc. v. Board of Appeal, 324 Mass. 427, 86 N.E.2d 920 (1949); Lampinski v. Rhode Island Racing & Athletics Comm'n, 94 R.I. 438, 181 A.2d 438 (1962). *But see* Jackson's Inc. v. Zoning Bd. of Appeals, 21 Conn. Supp. 102, 145 A.2d 241 (C.P. 1958).

99. Circle Lounge & Grille, Inc. v. Board of Appeal, 324 Mass. 427, 430, 86 N.E.2d 920, 922 (1949).

100. See, *e.g.*, Farr v. Zoning Bd. of Appeals, 139 Conn. 577, 95 A.2d 792 (1953).

101. See McDermott v. Zoning Bd. of Appeals, 150 Conn. 510, 191 A.2d 551 (1963); Bettman v. Michaelis, 27 Misc. 2d 1010, 212 N.Y.S.2d 339 (Sup. Ct. 1961).

102. STANDARD ACT § 7. See IOWA CODE ANN. § 414.15 (1949); PA. STAT. ANN. tit. 53, § 14759 (1957).

103. Krasnowiecki, *supra* note 64, at 56.

104. See *id.* at 55-56; Comment, *Zoning Variances*, 74 HARV. L. REV. 1396, 1400 (1961).

105. *E.g.*, O'Connor v. Board of Zoning Appeals, 140 Conn. 65, 98 A.2d 515 (1953); Mayor v. Byrd, 191 Md. 632, 62 A.2d 588 (1948); Norwood Heights Improvement Ass'n v. Mayor, 195 Md. 1, 72 A.2d 1 (1950); see Jackson's Inc. v. Zoning Bd. of Appeals, 21 Conn. Supp. 102, 106, 145 A.2d 241, 243 (C.P. 1958): "[E]very taxpayer has a certain, though it may be a small, pecuniary interest in having the . . . law well administered." *Cf.* Hamelin v. Zoning Bd., 19 Conn. Supp. 445, 117 A.2d 86 (C.P. 1955).

106. *E.g.*, DeVenne v. City of Lakewood, 95 Ohio L. Abs. 361, 201 N.E.2d 80 (Ct. App. 1964) (per curiam); see City of Fairfax v. Shanklin, 205 Va. 227, 135 S.E.2d 773 (1964).

107. See Tyler v. Board of Zoning Appeals, 145 Conn. 655, 145 A.2d 832 (1958). Most acts also allow for appeals by any officer, board, or bureau of the municipality.

E. *Associations*

In most jurisdictions a civic, improvement, or property owners' association cannot qualify as an aggrieved person.[108] Since an association generally does not own property, it cannot meet the "special damages" requirement,[109] and a mere interest in strict enforcement of zoning regulations for the benefit of the community or the association has not been considered an adequate substitute for the showing of special damages.[110] Moreover, even where a statute specifically provides that an association or organization may appeal,[111] it is not clear that courts will necessarily grant standing. Although there have been no decisions on the issue, it is likely that such provisions will be given the same narrow interpretation that has been given to provisions allowing "any taxpayer" to have standing. If that is so, an association will be forced to meet the stricter requirements of an ordinary aggrieved person.

III. Conclusion

Zoning regulation must be viewed not only as an instrument of public policy, but also as a protection, in the long run, against infringement of individual property rights. In order to harmonize the twin goals of uniformity and individual diversity, it is important that persons who have an interest in preserving an established plan have an opportunity to be heard when use changes are contemplated. For this reason statutory grants of aggrieved party status to third parties should be liberally construed. Since it is a matter of standing only, litigation on the merits of the complaint should be relied upon to expose any frivolous complaints.

At the same time, it is important that "aggrieved party" status be readily available to persons who apply for permits to change land

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Standard Act § 7; S.C. Code § 47-1014 (1962); Va. Code § 15.1-497 (1964). The scope of these provisions is not discussed in this comment because officials are not required to be aggrieved persons as well. See, *e.g.*, Dupuis v. Zoning Bd. of Appeals, 152 Conn. 308, 206 A.2d 422 (1965); Fox v. Adams, 206 Misc. 236, 132 N.Y.S.2d 560 (Sup. Ct. 1954). A few cases have allowed appeals by the city as an aggrieved party. See City of Mobile v. Lee, 274 Ala. 344, 148 So. 2d 642 (1963); City of Glen Cove v. Buxenbaum, 17 App. Div. 2d 828, 233 N.Y.S.2d 141 (1962).

108. *E.g.*, Lido Beach Civic Ass'n v. Board of Zoning Appeals, 13 App. Div. 2d 1030, 217 N.Y.S.2d 364 (1961). *But see* Ky. Rev. Stat. Ann. § 100.872 (1962).

109. 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. Ct. App. 1955); Feldman v. Nassau Shores Estates, Inc., 12 Misc. 2d 607, 172 N.Y.S.2d 769 (Sup. Ct. 1958). *But cf.* Taxpayers' Ass'n v. Board of Zoning Appeals, 301 N.Y. 215, 93 N.E.2d 645 (1950).

110. See Property Owners Ass'n v. Board of Zoning Appeals, 2 Misc. 2d 309, 123 N.Y.S.2d 716 (Sup. Ct. 1953); Tyler v. Board of Zoning Appeals, 145 Conn. 655, 145 A.2d 832 (1958). A person may not become aggrieved merely by assuming "the role of champion of a community." Blumberg v. Hill, 119 N.Y.S.2d 855, 857 (Sup. Ct. 1953).

111. *E.g.*, Ky. Rev. Stat. Ann. § 100.872 (1962).

use. The reasonableness of any denial of a variance can be examined by the board or the courts, but the requirement of standing should not be employed to inhibit expression of views. If a person can demonstrate that he possesses a substantial economic interest in the outcome of the variance proceeding, he should be accorded standing for purposes of appeal regardless of the nature of his legal interest in the affected property.

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