

Topic:

ZONING;

Location:

PLANNING AND ZONING;

Scope:

Connecticut laws/regulations;

**OLR RESEARCH REPORT**

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TO:

FROM: John Rappa, Principal Analyst

RE: Zoning

You wanted to know how the residents of a single family district could challenge a zoning commission's approval of a housing development that does not meet the current zoning requirements.

SUMMARY

A developer could obtain zoning approval for a housing project that does not conform to a district's zoning requirements by obtaining a special permit, variance, or zone change. The statutes require notices and public hearings as part of the process for obtaining these approvals. Area residents opposed to the project can use the hearings to voice their opposition. With respect to a zone change, they can force the commission to act by a two-thirds vote instead of a simple majority. The residents can also challenge a decision to approve the project by appealing to the zoning board of appeals or the Superior Court.

ASSUMPTIONS

In discussing ways to challenge the project, you wanted us to assume that the proposed site is in a residential zoning district comprised of single-family homes on individual lots and that the project would exceed the density limits for the parcel. This could happen if the zoning commission approves the project after reducing the minimum lot size or similar requirement.

PROJECT APPROVAL

The zoning commission could approve the project by approving a special permit or zone change. The former applies to certain uses that are allowed in a district only under certain conditions. For example, the regulations may allow churches or convenience stores in a single family district only if they have adequate parking, buffer spaces, or meet some other criteria spelled out in the regulations. The commission could also approve the project after amending the zoning regulations (i.e., zone change) to accommodate it.

If the commission denies the special permit or zone change, the developer could appeal to the zoning board of appeals (ZBA). He could do this only if the zoning regulations specifically allow this.

The developer could by-pass the zoning commission entirely and apply to the ZBA for a variance. The variance would waive a zoning requirement that the project could not meet. For example, the ZBA could waive the requirements dictating where the developer must place a structure on a lot.

Under the law, the ZBA can grant a variance only if the zoning regulations create a unique “hardship” for the property, which usually happens when they prevent the owner from making any “reasonable use” of the land. ZBAs frequently ignore this test but are seldom challenged in court. They find this test too rigid and uniform for different land use needs and believe that minor area variances do not damage “the fabric of local zoning,” Martindale stated (“Replacing the Hardship Doctrine: A Workable, Equitable Test of Zoning Variances,” **20 Connecticut Law Review**, 669 (1988)).

RESIDENTS' OPTIONS

Neighborhood residents can try to defeat the project by participating in the approval process. If that fails, they can appeal to the ZBA or the Superior Court.

Approval Process

The statutes require zoning commissions and ZBAs to follow certain procedures when approving special permits, variances, and zone changes. These procedures involve notices and public hearings.

Special Permit. The statutes give towns the option of issuing special permits through the zoning commission, the planning commission, or the ZBA. A town's zoning regulations should indicate the agency responsible for issuing the permits. The statutes also specify a procedure for issuing permits, but apply it only to zoning and combined planning and zoning commissions; it is not clear if planning commissions and ZBAs must follow them (CGS § 8-3c (b)).

Assuming the regulations make the zoning commission responsible for issuing special permits, then the commission must hold a public hearing on a permit application. It must do this within 65 days after receiving the application and render its decision within 30 after starting the hearing. The commission can extend the deadline if the applicant agrees. But it must still decide the application within 95 days of its submission date.

The commission must publish the time and place for the hearing at least twice in a local newspaper. The notices must be at least two days apart, the first appearing between 10 and 15 days before the hearing and the second one not less than two days before the hearing. The commission, at its own discretion, can mail notices to abutting property owners. People attending the hearing can be represented by their attorneys.

The commission must record the reasons for its decision and publish it in a local newspaper. It must also notify the applicant by certified mail.

The residents opposing the special permit must show that the proposed use does not meet the conditions specified in the regulations. Otherwise, the commission must approve the permit if these conditions are met. (Tondro, **Connecticut Land Use Regulations**, 1992).

Variance. The ZBA must hold a hearing on a variance application. The process and timeframes for doing so are the same as those governing special permits. It must also record the reason for granting the variance, describing "the exceptional difficulty or unusual hardship on which its decision is based." The ZBA must grant the variance if four out of the five board members vote to approve it (CGS § 8-7).

The residents opposing the variance must show that the zoning regulations impose no unique burden or hardship on the applicant. They would have to show that the hardship did not arise from the location of the parcel, that regulations have the same effect on it as they do on other parcels in the district, or that the applicant created the hardship through his own action.

Zone Change. The statutes also require public hearings for zone changes. The hearing must be held by a majority of the zoning commissioners or a special committee consisting of at least five commissioners. The commission must notify the public about the hearing in the same way it notifies the public about those for special permits. It must make a copy of the proposed changes available to the public for inspection at the town clerk's office. The commission can also send notices to abutting property owners.

It takes a majority vote of all the commissioners to approve the change. But, under certain conditions, residents opposing the change can require a two-thirds vote to approve the change. This happens if certain property owners file a petition with the commission at or before the hearing. The petition must be signed by the owners of at least 20% of the area of the lots affected by the change or 20% of the lots within 500 feet in all directions of the property included in the change.

Appeals Processes

ZBA. Residents aggrieved by a zoning decision can appeal to the ZBA. They must file a notice with the zoning commission stating the reasons for the appeal within 30 days of the decision or within the timeframe specified in the zoning regulations. This appeal stops the zone change from taking effect. The ZBA must then hold a hearing on the appeal, after giving notice in the same manner as for variances. It must also decide the appeal within the same timeframe for deciding variances and publish a notice of its decision (CGS § 8-7).

Court. Residents can also appeal a zoning or ZBA decision to the Superior Court. They have 15 days from when the decision was published by serving notice the commission's or board's chairman. The statutes specify the steps the residents and the court must follow to resolve the appeal.

JR:pa