

ARTICLE II            ZONING USES

ARTICLE II            Section 19      FLOOD PLAIN ZONE

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19.01            Statutory Authorization, Findings of Fact, and Purpose

19.01.01      Statutory Authorization: The Legislature of the State of Connecticut has in Section 8-2 of the Connecticut General Statutes delegated the responsibility to zoning commissions to adopt regulations designed to protect the public health, safety, convenience and property values and to secure safety from flood. Therefore, the Commission does ordain as follows:

19.01.02      Findings of fact:

- (a) The special flood hazard areas of the Town of Manchester are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

19.01.03      Statement of purpose: It is the purpose of this section to protect the public health, safety, convenience and property values and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (a) to protect human life and health;
- (b) to minimize expenditure of public money for costly flood control projects;
- (c) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) to minimize prolonged business interruptions;
- (e) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special hazards;
- (f) to help maintain a stable tax base by providing for the reuse and development of areas of special flood hazard so as to minimize future flood blight areas;

- (g) to ensure that potential buyers have access to information that would identify whether property is in an area of special flood hazard; and
- (h) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

19.01.04 Methods of reducing flood losses: In order to accomplish its purposes, this section includes methods and provisions for:

- (a) restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- (b) requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (c) controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (d) controlling filling, grading, dredging, and other development which may increase flood damage; and
- (e) presenting or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

19.02 Definitions

19.02.01 Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

- (a) Adversely affects shall mean that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
- (b) Area of Special Flood Hazard means the land in the flood plain within a community subject to a one per cent or greater chance of flooding in any given year.
- (c) Base Flood means the flood having a one per cent chance of being equaled or exceeded in any given year.
- (d) Development means any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining,

dredging, filling, grading, clearing and grubbing, paving, excavation or drilling operations located within the area of special flood hazard.

- (e) Federal Insurance Administrator means that person to whom the Director of the Federal Emergency Management Agency has delegated the administration of the National Flood Insurance Program.
- (f) Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. the overflow of inland waters, and/or
  - 2. the unusual and rapid accumulation or runoff of surface waters of any source.
- (g) Flood Plain Zone means that area within the 100 year flood plain (including the floodway and floodway fringe) as shown on the Flood Insurance Rate Map as areas of special flood hazard.
- (h) Flood Insurance Rate Map means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community as amended from time to time.
- (i) Flood Insurance Study means the official report provided in which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community as amended from time to time.
- (j) Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
- (k) Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor.<sup>1</sup>
- (l) Mean Sea Level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.<sup>2</sup>

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<sup>1</sup> Rev 06/27/88

<sup>2</sup> Rev 06/27/88

- (m) New Construction means structures for which the start of construction commenced on or after August 16, 1982 and includes any subsequent improvements to structures.<sup>3</sup>
- (n)<sup>4</sup> Recreational Vehicle means a vehicle which is 1) built on a single chassis; 2) 400 square feet or less when measured at the largest horizontal projections; 3) designed to be self propelled or permanently towable by a light duty truck; and 4) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.
- (o) Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.<sup>5</sup>
- (p) Structure means a walled and roofed building that is principally above ground.
- (q) Substantial Improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty per cent of the market value as determined by the cost approach to value the structure either<sup>6</sup>
1. before the improvement or repair is started, or
  2. if the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure required to comply with existing state

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<sup>3</sup> Rev 12/16/91

<sup>4</sup> Rev. 06/20/94

<sup>5</sup> Rev 06/27/88

<sup>6</sup> Rev 12/16/91

or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.<sup>7</sup>

- (r) Trailer (Manufactured Home) means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term does not include 'recreational vehicle'.<sup>8</sup>
- (s) Water Surface Elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplain of coastal or riverine areas.<sup>9</sup>

19.03 General Provisions

- 19.03.01 This section shall apply to all areas of special flood hazard within the jurisdiction of the Commission.
- 19.03.02 The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study, Town of Manchester, Connecticut" dated January 19, 1994<sup>10</sup>, with accompanying "Flood Insurance Rate Maps", "Floodway Maps" and other supporting data and any<sup>11</sup> revision thereto are adopted by reference and declared to be a part of this regulation. The Flood Insurance Study is on file in the office of the town clerk and the office of the planning department in Manchester, Connecticut.<sup>12</sup>
- 19.03.03 No structure or land within the areas of special flood hazard shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this section.
- 19.03.04 Where this section and another regulation, ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- 19.03.05 In the interpretation and application of this section all provisions shall be considered as minimum requirements and deemed neither to limit nor repeal any other powers granted under the Connecticut General Statutes.

<sup>7</sup> Rev. 12/16/91

<sup>8</sup> Rev. 12/16/91

<sup>9</sup> Rev. 06/27/88

<sup>10</sup> Rev. 06/20/94

<sup>11</sup> Rev. 06/20/94

<sup>12</sup> Rev. 06/27/88

19.03.06 The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of special flood hazard or uses permitted within such areas create liability on the part of the Town of Manchester or any officer or employee thereof for any flood damages that result from reliance on this regulation or any administrative decision lawfully made thereunder.

19.03.07 The Flood Plain zone is intended to overlay existing zoning designations. All uses which are permitted in the existing underlying zoning classifications are intended to remain as permitted uses subject to the restrictions and requirements in this section.

19.04 Administration

19.04.01 Development Permit: A development permit shall be obtained from the zoning enforcement officer after site plan approval by the Commission and before construction or development begins within any area of special flood hazard as defined in paragraph 19.03.02.

Application for site plan approval shall be made on forms furnished by the Commission and may include, but not be limited to, plans drawn to a scale of not less than 1" = 40' showing the nature, location, dimensions and elevations of the area for which a permit is requested; existing and proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (a) elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures;
- (b) elevation, in relation to mean sea level, to which any structure has been flood proofed;
- (c) certification by a registered professional engineer or registered architect that the flood proofing methods for a non-residential structure meet the flood proofing criteria of paragraph 19.05.02 (b);
- (d) description of the extent to which any watercourse will be altered or relocated as a result of a proposed development; and
- (e) plans for any walls to be used to enclose space below the base flood level.

- 19.04.02<sup>13</sup> The Commission shall approve, modify and approve, or deny site plan application within the Flood Plain zone in accordance with the provisions of this section. In making such decisions, the Commission's duties shall include:
- (a) Plan Review: Review all site plan applications required by this section:
    - 1. to determine that the requirements of this section have been satisfied;
    - 2. to assure that all necessary permits have been obtained from those federal, or state governmental agencies from which prior approval is required;
    - 3. to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard;
    - 4. to determine if plans for walls to be used to enclose space below the base flood level are in accordance with paragraph 19.05;
    - 5. to determine whether proposed building sites will be reasonably safe from flooding.
  - (b) When base flood elevation data has not been provided in accordance with paragraph 19.03.02, the Commission shall obtain (or require an applicant to obtain), review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source in order to assure compliance with the terms and requirements of paragraphs 19.05.02 (a) and 19.05.02 (b).
  - (c) Maintain for public inspection all records pertaining to the provisions of this section.
  - (d) Notify adjacent communities and the Connecticut Department of Environmental Protection prior to any decision by the Commission regarding the alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator.
  - (e) Assure that the flood carrying capacity within an altered or relocated portion of a watercourse is maintained.
  - (f) Maintain the flood proofing certifications required by paragraph 19.04.01 (c) for all non-residential, new or substantially improved flood proofed structures.
- 19.04.03 The zoning enforcement officer shall:

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<sup>13</sup> Rev 06/27/88

- (a) Issue development permits in accordance with site plans approved by the Commission;
- (b) Obtain (or require an applicant for a building permit to obtain) and record the actual elevation, in relation to mean sea level, of the lowest floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement;
- (c) Verify (or require an applicant for a building permit to verify) and record the actual elevation, in relation to mean sea level, of all new or substantially improved flood proofed structures;
- (d) Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards;
- (e) Issue a Certificate of Compliance upon completion of development in accordance with the permit and the recording of data required by Sections 19.04.03 (b) and (c). A copy of the certificate shall be provided to the Commission.

19.04.04 Variance procedures:

- (a) In hearing and passing upon any application for a variance from the requirements of this section, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other paragraphs of this section, and:
  - 1. the danger that materials may be swept onto other lands to the injury of others;
  - 2. the danger to life and property due to flooding or erosion damage;
  - 3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - 4. the importance of the services provided by the proposed facility to the community;
  - 5. the necessity to the facility of a waterfront location, where applicable;
  - 6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - 7. the compatibility of the proposed use with existing and anticipated development;



8. the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
  9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
  10. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effect of wave action, if applicable, expected at the site; and
  11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (b) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing paragraph 19.04.04 (a) has been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance shall increase.
- (c) Variances shall be issued only upon:
1. a determination that the variance is the minimum necessary considering the flood hazard to afford relief;
  2. a showing of good and sufficient cause; and
  3. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public as identified in paragraph 19.04.04 (a) or conflict with existing local laws or ordinances.
- (d) Variances shall not be issued by the Zoning Board of Appeals within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result from the activity from which the variance is requested.<sup>14</sup>
- (e) The Zoning Board of Appeals shall maintain the records of all appeal actions and shall report any variances to the Federal Insurance Administrator upon request.

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<sup>14</sup> Rev. 12/16/91

- (f) An applicant to whom a variance of this section is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

19.05 Provisions for Flood Hazard Reduction

19.05.01 In all areas of special flood hazards the following standards are required:

- (a) Anchoring: All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (b) Construction materials and methods:
  - 1. All new construction and substantial improvements shall be constructed with materials resistant to flood damage.<sup>15</sup>
  - 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - 3. Electrical, heating, plumbing, ventilation and other mechanical systems and service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the system or any of its components during conditions of flooding.
- (c) Utilities:
  - 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
  - 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
  - 3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (d) Trailers (Manufactured Homes):

All trailers (Manufactured Homes)<sup>16</sup> as permitted in Article II, Section 21 or used as a temporary office on construction sites shall be elevated so that the lowest floor is above the base flood elevation. They shall be placed on a

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<sup>15</sup> Rev. 12/16/91

<sup>16</sup> Rev 12/16/91

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permanent foundation which itself is securely anchored and to which the structure is securely anchored so that it will resist flotation, lateral movement, and hydrostatic and hydrodynamic pressures. Anchoring may include but not be limited to the use of over the top or frame ties to ground anchors.<sup>17</sup>

- (e)<sup>18</sup> Recreational Vehicles placed on sites within Zones A-1-30, AH and AE shall either 1) be on the site for fewer than 180 consecutive days; 2) be fully licensed and ready for highway use; or 3) meet all standards of Section 60.3 (b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" of Section 19.05.01(d).

19.05.02 In all areas of special flood hazards where base flood elevation data has been provided as set forth in paragraph 19.03.02 the following standards are required:

- (a) New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation.
- (b) New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:
1. be designed so that below the base flood level the structure is water tight with wall substantially impermeable to the passage of water;
  2. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  3. be certified by a registered professional engineer or registered architect that the flood proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood. Such certification shall be provided to the Commission as set forth in paragraph 19.04.01 (c).
- (c) New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.<sup>19</sup>

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<sup>17</sup> Rev. 10/02/89

<sup>18</sup> Rev. 06/20/94

<sup>19</sup> Rev. 08/16/82

Designs for complying with this requirement must either be certified by a professional engineer or architect and meet the following minimum criteria:

- 1) provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - 2) the bottom of all openings shall be no higher than one foot above grade; and
  - 3) openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.<sup>20</sup>
- (d) Pursuant to Section 19.04.02(b) of these regulations, in special flood hazard area Zone A where base flood elevations have been determined but before a floodway is designated, no new development (including fill) shall be permitted which will increase base flood elevations more than one (1) foot at any point along the watercourse when all anticipated development is considered cumulatively with the proposed development.

The Town may request of the applicant floodway data and adopt a regulatory floodway pursuant to that data. The regulatory floodway shall be based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one (1) foot at any point along the watercourse.<sup>21</sup>

19.05.03<sup>22</sup> Located within areas of special flood hazard are areas designated as floodways on the Flood Boundary and Hazard Map or as determined in 19.04.02 (b). Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other development within the floodway, unless certification by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (b) If paragraph 19.05.03 (a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of paragraph 19.05.<sup>23</sup>

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<sup>20</sup> Rev 06/27/88

<sup>21</sup> Rev. 12/16/91

<sup>22</sup> Rev 08/16/82

<sup>23</sup> Rev 06/27/88

19.06 The zoning enforcement officer and the Commission shall maintain a record of the information regulations of the National Flood Insurance Program.

# CHAPTER 124\*

## ZONING

\*Constitutionality of zoning; restoration of nonconforming use. 110 C. 92. No impairment of vested rights by adoption of regulations after contract made to purchase land and work commenced. 110 C. 141 Cited. 112 C. 240, 245; 113 C. 50; 116 C. 555; 118 C. 7; 123 C. 480; 124 C. 54. History of zoning laws in state. 133 C. 250. Cited. 139 C. 119; 143 C. 152, 280. No municipality is obliged to establish a planning commission, and statutory authority granted to towns, cities and boroughs under this chapter for establishment of zoning commission is not conditioned on simultaneous exercise of powers granted under chapter 126. 144 C. 117. Cited. 145 C. 435, 625; 147 C. 65; 148 C. 492. Entire history of zoning legislation indicates clear intention on part of general assembly, subject to certain underlying principles, to leave solution of zoning questions to local authority. Courts must not substitute their discretion for wide and liberal discretion enjoyed by zoning agencies. Court can grant relief on appeal only where local authority has acted arbitrarily or illegally and has thus abused discretion vested in it. 150 C. 79. Cited. 150 C. 131; 154 C. 203; Id., 463. Chapter is a general zoning enabling act and has no effect in city of Hartford whose legislative body has not acted to adopt it, except as to such provisions as sections 8-8 through 8-10 which the legislature intended should apply to all municipalities. 155 C. 360. Provisions of section 8-7 held not to apply to municipality until it has adopted chapter as provided in section 8-1. Id., 422. City of Norwalk has been acting under general statutes in zoning matters since 1929; therefore provisions of chapter apply to appeal from its board. Id., 550. Cited. 157 C. 308, 552. Whether or not a municipality adopts this chapter, appeals from its final zoning authority are governed by section 8-10. 159 C. 1. Cited. 159 C. 598. Amendments to zoning regulations are essentially legislative actions and courts will not disturb them unless amendment violates this chapter or is "patently arbitrary." 164 C. 210. Zoning in Norwich is controlled by special act. hence its charter and not this chapter controls the reference to referendum of a zoning ordinance. 167 C. 579. Cited. 171 C. 480, 484. Fact that town and zoning enforcement officer, defendants in the action, were not named in the two previous actions does not preclude application of doctrine of res judicata. Since they represent the rights of the municipality the agents of the same municipal corporation are in privity with each other and with the municipality. 181 C. 556, 561. Cited. 189 C. 261, 263, 267. Cited. 208 C. 267, 274, 281. Sec. 8-1 et seq., zoning, cited. 211 C. 690, 696. Secs. 8-1 8-30a cited. 213 C. 604, 606. Cited. 221 C. 374, 382. Secs. 8-1 8-13a cited. 227 C. 71, 81. Cited. 2 CA 595, 597. Cited. 22 CA 407, 408. Sec. 8-1 et seq. cited. 35 CA 317, 319. Where building permit has been properly obtained, it may not arbitrarily be revoked, particularly where, on faith of it, owner has incurred material expense and substantial liabilities. 23 CS 461. Cited. 25 CS 278. Cited. 28 CS 286.

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**Sec. 8-1. Zoning commissions.** (a) Any municipality may, by vote of its legislative body, adopt the provisions of this chapter and exercise through a zoning commission the powers granted hereunder. On

July 1 after July 1, 1974, in each municipality, except as otherwise provided by special act or charter provision adopted under chapter 99, the zoning commission shall consist of not less than five nor more than nine members, with minority representation as determined under section 9-167a, who shall be electors of such municipality. The number of such members and the method of selection and removal for cause and terms of office shall be determined by ordinance, provided no such ordinance shall designate the legislative body of such municipality to act as such zoning commission, except that (1) in towns having a population of less than five thousand, the selectmen may be empowered by such ordinance to act as such zoning commission, (2) a legislative body which is acting as a zoning commission prior to July 1, 1974, pursuant to an ordinance, may continue to act as such zoning commission if such municipality has initiated a charter revision pursuant to section 7-188, prior to July 1, 1974, which revision proposes to designate such legislative body as the zoning commission, and such charter revision is approved as provided in section 7-191, and (3) a legislative body which is acting as a zoning commission prior to June 17, 1987, pursuant to a special act may continue to act as such zoning commission. The manner for filling vacancies arising from any cause shall be provided by vote of the legislative body.

(b) The zoning commission of any town shall have jurisdiction over that part of the town outside of any city or borough contained therein except that the legislative body of any city or borough may, by ordinance, designate the zoning commission of the town in which such city or borough is situated as the zoning commission of such city or borough. (1949 Rev., S. 836; 1951, S. 156b; 1953, S. 373d; 1957, P.A. 13, S. 41; 1959, P.A. 614, S. 1; P.A. 73-256; P.A. 74-232, S. 1, 2; P.A. 75-629, S. 1; P.A. 87-278, S. 3, 5.)

History: 1959 act authorized ordinances determining method of removal for cause and authorized legislative body to determine manner of filling vacancies; P.A. 73-256 established membership of zoning



commission as "not less than five nor more than nine members with minority representation as determined under section 9-167a", effective July 1, 1974, unless otherwise provided and prohibited legislative body from acting as zoning commission reversing previous provision allowing such double duty; P.A. 74-232 set forth special conditions under which legislative body may act as zoning commission; P.A. 75-629 divided section into subsections and set forth conditions under which town commission serves as commission for city or borough within its limits; P.A. 87-278 added Subdiv. (3) of Subsec. (a) concerning legislative bodies acting as a zoning commission pursuant to a special act. See Secs. 1-1 and 9-1 for applicable definitions.

See Sec. 9-209 re certification of terms of office and number of members of planning and zoning boards or commissions.

See Sec. 22a-354n re delineation of aquifer protection areas on maps.

Extent of zoning authority of city. 110 C. 101, 102. Establishment of commission is act of town, not legislature; optional with town to adopt and to terminate zoning system. 118 C. 6. Cited. 131 C. 299; 132 C. 216; 133 C. 234. Reference to special act explained. 133 C. 251. Town meeting may not amend or repeal regulations duly made by commission. 133 C. 596. Cited. 138 C. 500; 141 C. 349; 143 C. 448. Once a municipality has established a zoning commission, it cannot regulate its actions, except as expressly provided in its municipal charter. 148 C. 33. Cited. 148 C. 299; 149 C. 411. Municipality's legislative body must pass on act in which the intent to utilize the zoning provisions of the enabling act is expressed. 152 C. 237. Where legislative body of city of Hartford never took action to adopt chapter, provisions do not apply to city except where the legislature makes sections applicable to all municipalities. 155 C. 360. Until chapter is adopted by legislative body of municipality in manner provided, section 8-7 does not apply to hearings before its zoning board of appeals. Id., 422. Cited. 157 C. 308, 552. The mere fact that one not a member of a zoning commission served as moderator of a commission meeting does not invalidate the meeting in absence of a showing the meeting was conducted illegally. 166 C. 207. Cited. 167 C. 579. Cited. 170 C. 61, 62. Cited. 189 C. 261, 263. Cited. 208 C. 267, 274. Cited. 214 C. 400, 405. Cited. 216 C. 112, 122. Cited. 220 C. 584, 595, 598. Cited. 21 CA 351, 356.

Cited. 5 CS 195. Members of zoning board are not agents or employees of a town. They constitute a legal entity. 12 CS 192. Cited. 13 CS 59; 14 CS 246. Limitation put on town's authority to avoid duplication with political subdivision. 14 CS 258. Compared with former statute. 15 CS 413. Cited. 18 CS 45; 19 CS 446. Municipality must adhere minutely to enabling act when adopting zoning ordinance. 21 CS 78. Failure of board of burgesses to formally adopt enabling act held to invalidate subsequent zoning ordinance. Id. Omission of zoning powers from enumeration of specific powers granted to towns under Home Rule Act compels conclusion that legislature did not intend that any action under said act should alter the declared law under this statute. 25 CS 378, 379. Zoning regulations adopted prior to new charter which contains no zoning regulation powers, prevail over charter and zoning commission could appoint its own agent as zoning enforcement officer of the town. 28 CS 278. Cited. 28 CS 419.

Subsec. (a):

Cited. 220 C. 584, 597.

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**Sec. 8-1a. "Municipality" to include district.** "Municipality" as used in this chapter shall include a district establishing a zoning commission under section 7-326. Wherever the words "town" and "selectmen" appear in this chapter, they shall be deemed to include "district" and "officers of such

district", respectively.

(1959, P.A. 577, S. 1.)

Cited. 212 C. 375, 380. Cited. 216 C. 112, 122.

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**Sec. 8-1b. Alternate members of zoning commission or combined planning and zoning commission.**

Any town, city or borough, in addition to such powers as it has under the provisions of the general statutes or any special act, shall have the power to provide by ordinance for the appointment or election of alternate members to its zoning commission or combined planning and zoning commission. Such alternate members shall, when seated as herein provided, have all the powers and duties set forth in the general statutes or any special act relating to such municipality for such commission and its members. Such alternate members shall be electors and shall not be members of the zoning board of appeals or planning commission. Such ordinance shall provide for the manner of designating alternates to act.

(1963, P.A. 249; February, 1965, P.A. 280; 1971, P.A. 763, S. 1; P.A. 84-154, S. 1, 3; P.A. 85-284, S. 1, 5.)

History: 1965 act provided option of electing alternate members; 1971 act deleted provision concerning alternate members of planning commissions, forbade members of planning commission to serve as alternate members of zoning commission and deleted provisions concerning selection of alternate by member he is to substitute for, giving chairman sole power to make selection; P.A. 84-154 provided for mandatory appointment or election of alternates, effective January 1, 1986; P.A. 85-284 repealed provisions of P.A. 84-154 and provided that local ordinances shall provide for the manner of designating alternates to act.

∴ Sec. 8-19a re alternate members of planning commission.

Cited. 168 C. 20.

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**Sec. 8-1c. Fees for municipal land use applications.** Any municipality may, by ordinance, establish a schedule of reasonable fees for the processing of applications by a municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or inland wetlands commission. Such schedule shall supersede any specific fees set forth in the general statutes, or any special act or established by a planning commission under section 8-26.

(P.A. 82-282; P.A. 93-124, S. 2; May 25 Sp. Sess. P.A. 94-1, S. 9, 130.)

History: P.A. 93-124 added reference to planning commissions for consistency with 1993 changes to the general statutes; May 25 Sp. Sess. P.A. 94-1 made technical change, effective July 1, 1994.

Town has broad authority under section to define subdivision application processing fees by ordinance subject only to the standard of reasonableness. 232 C. 44, 45, 47 56.

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**Sec. 8-1d. Hours for holding land use public hearings.** Any municipality may, by ordinance, establish an hour at or after which public hearings shall be held by its planning commission, zoning commission, combined planning and zoning commission, zoning board of appeals and inland wetlands agency.

(P.A. 89-175, S. 2, 7 )

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**Secs. 8-1e to 8-1z.** Reserved for future use.

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**Sec. 8-1aa. Ridgeline protection: Definitions.** As used in section 8-2:

(1) "Traprock ridge" means Beacon Hill, Saltonstall Mountain, Totoket Mountain, Pistapaug Mountain, Fowler Mountain, Beseck Mountain, Higby Mountain, Chauncey Peak, Lamentation Mountain, Cathole Mountain, South Mountain, East Peak, West Peak, Short Mountain, Ragged Mountain, Bradley Mountain, Pinnacle Rock, Rattlesnake Mountain, Talcott Mountain, Hatchett Hill, Peak Mountain, West Suffield Mountain, Cedar Mountain, East Rock, Mount Sanford, Prospect Ridge, Peck Mountain, West Rock, Sleeping Giant, Pond Ledge Hill, Onion Mountain, The Sugarloaf, The Hedgehog, West Mountains, The Knolls, Barndoor Hills, Stony Hill, Manitook Mountain, Rattlesnake Hill, Durkee Hill, East Hill, Rag Land, Bear Hill, Orenaug Hills;

(2) "Amphibolite ridge" means Huckleberry Hill, East Hill, Ratlum Hill, Mount Hoar, Sweetheart Mountain;

(3) "Ridgeline" means the line on a traprock or amphibolite ridge created by all points at the top of a fifty per cent slope, which is maintained for a distance of fifty horizontal feet perpendicular to the slope and which consists of surficial basalt geology, identified on the map prepared by Stone et al., United States Geological Survey, entitled "Surficial Materials Map of Connecticut";

(4) "Ridgeline setback area" means the area bounded by (A) a line that parallels the ridgeline at a distance of one hundred fifty feet on the more wooded side of the ridge, and (B) the contour line where a ridge of less than fifty per cent is maintained for fifty feet or more on the rockier side of the slope, mapped pursuant to section 8-2;

(5) "Development" means the construction, reconstruction, alteration, or expansion of a building; and

(6) "Building" means any structure other than (A) a facility as defined in section 16-50i or (B) structures of a relatively slender nature compared to the buildings to which they are associated, including but not limited to chimneys, flagpoles, antennas, utility poles and steeples.

(P.A. 95-239, S. 1; P.A. 98-105, S. 2; June Sp. Sess. P.A. 98-1, S. 83, 121.)

History: P.A. 98-105 added new Subdiv. (2) defining "amphibolite ridge", renumbering existing Subdivs. accordingly, and made technical corrections; June Sp. Sess. P.A. 98-1 made technical corrections, effective June 24, 1998.

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**Sec. 8-2. Regulations.** (a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses as defined in section 22a-93, and the height, size and location of advertising signs and billboards. Such bulk regulations may allow cluster development as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this

chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the housing plan prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family day care home or group day care home in a residential zone. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and

built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

(b) In any municipality that is contiguous to Long Island Sound the regulations adopted under this section shall be made with reasonable consideration for restoration and protection of the ecosystem and habitat of Long Island Sound and shall be designed to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound. Such regulations shall provide that the commission consider the environmental impact on Long Island Sound of any proposal for development.

(c) In any municipality where a traprock ridge, as defined in section 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located the regulations may provide for development restrictions in ridgeline setback areas, as defined in said section. The regulations may restrict quarrying and clear cutting, except that the following operations and uses shall be permitted in ridgeline setback areas, as of right: (1)

emergency work necessary to protect life and property; (2) any nonconforming uses that were in existence and that were approved on or before the effective date of regulations adopted under this section; and (3) selective timbering, grazing of domesticated animals and passive recreation.

(1949 Rev., S. 837; November, 1955, S. N10; 1959, P.A. 614, S. 2; 661; 1961, P.A. 569; 1963, P.A. 133; 1967, P.A. 801; P.A. 77-509, S. 1; P.A. 78-314, S. 1; P.A. 80-327, S. 1; P.A. 81-334, S. 2; P.A. 83-388, S. 6, 9; P.A. 84-263; P.A. 85- 91, S. 2, 5; 85-279, S. 3; P.A. 87-215, S. 1, 7; 87-232; 87-474, S. 1; 87-490, S. 1; P.A. 88-105, S. 2; 88-203, S. 1; P.A. 89- 277, S. 1; P.A. 91-170, S. 1; 91-392, S. 1; 91-395, S. 1, 11; P.A. 92-50; P.A. 93-385, S. 3; P.A. 95-239, S. 2; 95-335, S. 14, 26; P.A. 97-296, S. 2, 4; P.A. 98-105, S. 3.)

History: 1959 acts required that regulations be uniform for use of land in district and authorized requirement of special permits or exceptions; 1961 act deleted provision authorizing reconstruction of nonconforming structure destroyed or damaged by fire or casualty provided cost be less than fifty per cent of fair market value of property and reconstruction be commenced within six months; 1963 act allowed municipality to exempt municipal property from zoning regulations; 1967 act specified that special acts contrary to provision re special permits or special exceptions have no bearing; P.A. 77- 509 allowed considerations of historic factors, sedimentation control and erosion in zoning regulations; P.A. 78-314 allowed regulations to encourage energy-efficient development, energy conservation and use of renewable forms of energy; P.A. 80-327 allowed consideration of water supply protection; P.A. 81-334 authorized regulations to provide for incentives for developers using passive solar energy techniques; P.A. 83-388 required provision be made for soil erosion and sediment control, effective July 1, 1985; P.A. 84-263 provided the regulations shall encourage the development of housing opportunities for all citizens of the municipality consistent with soil types, terrain and infrastructure capacity (Note: P.A. 84-263, which took effect on October 1, 1984, incorporated the amendment enacted by P.A. 83-388, but

the Revisors are of the opinion that (1) this in no way changed the July 1, 1985, effective date of the 1983 act, and (2) the further amendment in the 1984 act took effect on October 1, 1984); P.A. 85-91 specified the date by which provision for soil erosion and sediment control is required; P.A. 85-279 made consideration of the protection of surface water and groundwater mandatory where before it had been discretionary; P.A. 87-215 authorized regulations to provide for additional notice requirements; P.A. 87-232 provided that no regulations shall prohibit the operation of any family day care home or group day care home in a residential zone; P.A. 87-474 clarified authority to regulate water-dependent uses; P.A. 87-490 inserted provisions concerning creation and transfer of development rights; P.A. 88-105 required zoning regulations to be made with reasonable consideration for their impact on agriculture; P.A. 88-203 added provisions re imposition of conditions and requirements on certain manufactured homes and developments to be occupied by certain manufactured homes; P.A. 89-277 added provision specifying that the regulations shall not provide for the termination of a nonconforming use solely as a result of nonuse without regard to intent; P.A. 91-170 designated existing language as Subsec. (a) and added Subsec. (b) re regulations in municipalities contiguous to Long Island Sound; P.A. 91-392 required regulations to encourage opportunities for multifamily dwellings for residents of municipality and planning region, to promote housing choice and economic diversity in housing and to encourage housing development consistent with the state housing plan and the state plan of conservation and development; P.A. 91-395 authorized adoption of regulations under this section to provide for cluster development; P.A. 92-50 amended Subsec. (a) to eliminate reference to adoption of regulations in accordance with the comprehensive plan and substituted consideration of the plan of development in lieu thereof; P.A. 93-385 amended Subsec. (a) by requiring that regulations be made in accordance with a comprehensive plan; P.A. 95-239 added Subsec. (c) re development restrictions in ridgeline setback areas (Note: Uppercase alphabetic Subdiv. indicators were replaced editorially by the Revisors with numeric indicators for consistency with customary statutory usage); P.A. 95-335 amended Subsec. (a) to change "plan of development" to "plan of conservation and development", effective July 1, 1995; P.A. 97-296 amended Subsec. (a) to allow regulations to provide for conditions on operations to collect spring or well water, effective July 8, 1997; P.A. 98-105 amended Subsec. (c) to provide for protection of amphibolite ridgelines.

Regulation prohibiting in light industrial zone a use noxious by reason of odor, dust, gas or smoke has rational relation to health and public welfare. 110 C. 102. Exclusion from residential zones of buildings devoted to most business uses is proper. 110 C. 138. "Farming" in regulation construed. 113 C. 53. Where change in regulations seriously affects value of property of an individual. 123 C. 286. Not a violation of this section to treat signs referring to business on property where signs stand differently from signs not so related to such a business. 131 C. 304. What constitutes a zoning regulation. 131 C. 647. Cited. 123 C. 264; 126 C. 237; 132 C. 216; 134 C. 293. To permit business in small area within residential zone may fall within scope of a "comprehensive plan," and unless it amounts to unreasonable or arbitrary action, is not unlawful. 136 C. 89. Change of zone for small area can be made only if it falls within requirements of comprehensive plan. 136 C. 452. Ordinance valid as meeting requirements of enabling act if plan is comprehensive as to territory, public needs and time and if it promotes public welfare. 138 C. 434. Action of commission was spot zoning. 139 C. 59. Extension of industrial zone into residential area is proper if in accord with comprehensive plan and general welfare. 139 C. 603. Requires zoning regulations be expressive of plan which is comprehensive and promotes public welfare. 141 C. 349. Zoning regulations shall be made in accordance with "a comprehensive plan" which is general plan to control and direct use and development of property in municipality or large part thereof by dividing it into districts according to present and potential use of properties. 142 C. 265. Zoning regulations must be made upon reasonable consideration of character of district and its peculiar suitability for particular

purposes and with view to conserving value of buildings and encouraging most appropriate use of land throughout the town. 142 C. 580. Cited. 143 C. 280. Zoning commission and not town meeting authorized to divide municipality into districts and to regulate erection or use of buildings or structures and use of land. 143 C. 448. Power to determine what are needs of town with reference to use of real property and to legislate in such manner that those needs will be satisfied vests exclusively in zoning commission. 143 C. 542. Comprehensive plan in accordance with which zoning regulations are to be adopted is such a plan as zoning commission devises. 144 C. 117. Permits change in zonal classification only when change is made in accordance with comprehensive plan. 144 C. 160. Regulations should be made in accordance with comprehensive plan. 144 C. 560. Elements of spot zoning. 144 C. 600. Spot zoning defined. 145 C. 26; 148 C. 97. Granting of change of zone within two months of refusal of similar application and after private conference with applicants opens commission to criticism. 145 C. 237. Anything which weakens public confidence in commission and undermines sense of security of individual's rights is against public policy. *Id.* Zoning regulations are invalid if not made in accordance with comprehensive plan (former statute). 145 C. 394. Deviation from comprehensive plan permissible. Zone change which may increase traffic in area not necessarily barred. 145 C. 435. Interpretation of special act similar to this section. 145 C. 476. Requisites to establish nonconforming use. 145 C. 682. Main, principal and dominant use of a building determines its character. 146 C. 70. Change of zone increased rather than lessened congestion in streets; action of commission held illegal. 146 C. 321. Maximum possible enrichment of developers is not controlling purpose of zoning. 146 C. 531. Powers of zoning commission distinguished from those of planning commission. 146 C. 570. Dicta that zoning regulations may in their operation result in prohibition under some circumstances. 146 C. 697. One aim of zoning is elimination of nonconforming uses. 147 C. 30. Provision re continuance of nonconforming uses not applicable to regulations enacted prior to effective date of this amendment. 147 C. 358. Use held to be permissible nonconforming use because lot was not being used for such purpose when zoning regulations were adopted. 148 C. 84. A proposed use cannot constitute an existing nonconforming use. 148 C. 299. Conflict between public welfare and private gain discussed. *Id.* An essential purpose of zoning is to stabilize use of property. 148 C. 492. "Comprehensive plan" defined. *Id.* Interpretation that regulation, prohibiting premises to be used for sale of liquor if entrance to same was within 1,500 feet of entrance to other premises used for such sale, prohibited certification of premises in question because liquor outlet was located within 1,500 feet, although in another town, held proper and did not give extraterritorial effect to regulation. 149 C. 292. Fact that this section forbids zoning regulations affecting antecedent nonconforming uses is no benefit to plaintiff who merely contemplates such a use. 149 C. 678. In order to attack constitutionality of regulations, plaintiff must demonstrate that it is affected by them. Challenge of unconstitutional delegation of legislative power is successfully met if ordinance declares a legislative policy, establishes primary standards for carrying it out or lays down an intelligible principle to which agency must conform with proper regard for protection of public interest. Regulations themselves are not unconstitutional because of failure to establish adequate standards to meet constitutional requirement. In order to hold zoning regulation unconstitutional as violative of due process of law or equal protection clauses of state or federal constitution, it must appear that provisions are clearly arbitrary and unreasonable, having no substantial relation to public health, safety, morals or general welfare. Regulations did no more than offer assurance of measure of supervision by responsible public authority over conditions which affected public health, safety and general welfare, and consequently they were a proper exercise of the police power. 149 C. 712. Question of power or authority of commission either to hear or to decide application for change of zone must be decided before further action is taken. Trial court should have determined the question, it being basic to issue of validity of change of zone. 149 C. 746. Legislative history and purposes discussed. Zoning commission can by

regulation reserve to itself or delegate to any of the other specified agencies power to grant a special permit or special exception. Purpose of this section is to establish means by which special requirements affecting particular property could be imposed whether they affected buildings and structures or land.

Provision that zoning regulations must conform to a comprehensive plan is to prevent arbitrary, unreasonable and discriminatory exercise of zoning power. Comprehensive plan of Ridgefield found in scheme of zoning regulations themselves. Courts cannot substitute their discretion for wide and liberal discretion enjoyed by local zoning agencies. Relief can be granted on appeal only when local authority has acted arbitrarily or illegally and thus has abused discretion vested in it. 150 C. 79. Change of zone for small area is open to suspicion as spot zoning but can be sustained if it is in harmony with comprehensive plan. Zoning commission may accept long-continued nonconforming use as permanent and inevitable and find that change of zone which would render use conforming would encourage most appropriate use of land in town. 150 C. 129. Cited. 150 C. 146. Nonconforming uses should be abolished or reduced to conformity as speedily as fair interest of parties will permit, and in no case should be allowed to increase. 150 C. 439. Power to stipulate restrictions re garden apartments implied power to withhold approval entirely. 150 C. 672. Where zoning regulations excluded uses not specifically permitted and made no provision for storing vehicles on vacant lots in residential zone, plaintiff was in violation for doing so. 151 C. 46. Burden of proof as to whether commission acted improperly is on aggrieved party. 151 C. 484. If any reason for action of commission in denying a zone change is supported, subsequent appeal must fail. 152 C. 262. Cited. 152 C. 329. Word "school" used in zoning regulations of Westport construed. 152 C. 559. Fact that zoning regulations were designated as "interim" does not make them invalid. 153 C. 187. Where zoning regulations imposed restrictions on lot size, the placement of building on property and minimum living areas of residential property, with exceptions for seasonal properties within 500 feet of the high-water mark of any body of water, held that a "comprehensive" plan was established, even though no restriction was placed on the particular uses which might be made of the property since the community was small, rural and almost entirely residential and since, because the zoning commission is clothed with liberal discretion in enacting the regulations, a court is not justified in upsetting its decision merely because it feels a different classification might have been preferable. 153 C. 191. It is not required that zoning regulations divide town into districts as long as every owner of property located in the town can ascertain with reasonable certainty what uses he may legally make of any portion of his property. *Id.* Cited. 153 C. 310. Where the plaintiff's application to the board does not make it clear whether a permit under the zoning ordinance or an approval under the statutes is requested, the board must decide each issue separately and the required number of votes for each must be met in order for the application to be approved. 154 C. 32, 36. In the absence of standards set up by the local zoning ordinance, the power to grant a special permit under this statute is denied despite the fact that the statute itself provides for certain standards. 154 C. 156, 161. Cited. 154 C. 210. Zoning commission's refusal of a change of zone as to plaintiff's property shown by the record as not arbitrary or an abuse of discretion but for the general welfare of the community. 154 C. 309. Standards used for special exceptions for hospital found sufficiently definite. 154 C. 399, 403. Zoning authority acts as a legislative body in making zoning changes. Commission acted reasonably in rezoning a central area to meet the changing conditions of the town. 154 C. 463. Amendment adopted by zoning commission involved a debatable question within its legislative capacity to resolve. Courts are cautious about disturbing commission's decisions. 154 C. 470. Record does not show town plan and zoning commission acted illegally, arbitrarily or in abuse of its discretion in upgrading zone of an undeveloped residential area, particularly when change of zone was made in accordance with comprehensive plan lately adopted. 154 C. 638. Although commission should not ordinarily alter classification of area in absence of changed conditions, rule being a restriction on legislative discretion



will be applied only when zoning amendment is patently arbitrary. 155 C. 209. Spot zoning defined. Id., 210. Change of zone predicated on interest in providing housing for persons displaced by redevelopment project, if otherwise consistent with accepted zoning principles, is reasonable exercise of board's discretionary powers. Id. Cited. 155 C. 563; 156 C. 102, 287, 300. Zoning board of appeals upheld where it granted exception to town to locate sanitary landfill operation as record showed public welfare was served thereby and neighboring property not substantially injured. 157 C. 106. Responsibility and authority for zoning rests with zoning commission and unless its action is clearly contrary to a rational development of the town's comprehensive plan, courts will not interfere with commission's decisions. Id., 434. Regulation requiring signature of owner on future developer's petition for change was waived by lack of timely objection and its omission did not affect jurisdiction of commission. Id., 520. Change of zone enacted by commission substantially not in accordance with comprehensive plan of zoning of town held arbitrary, illegal and in abuse of its discretion. 158 C. 78. Only in cases where zoning authority has acted arbitrarily or illegally will courts reverse such authority's disapproval of reclassification. Id., 111. Zoning commission's delegation of power to grant exception to zoning board of appeals was invalid as no criteria were given and delegation of power was too broad. 158 C. 196. Denial of plaintiff's application for change of zone for property he owned not unreasonable merely on ground zoning authority had approved the same changes the previous year. 158 C. 301. Where plaintiff's filling station was an existing use which predated zoning ordinance and ordinance provided for filling stations as exceptional use in his area, the use was not a nonconforming but a permitted use. 158 C. 516. Language herein is sufficiently broad to permit creation of floating zones. 159 C. 192; 197. Section does not militate against change in general zoning classification that is reasonable and in community interest. 159 C. 192. Cited. 160 C. 120, 121. Zoning commissions may grant special building permits subject to certain conditions to protect public health, safety, convenience and property values. 160 C. 295. Although zoning commission has the discretion it must predicate its decisions on fair and proper motives and follow legislative direction of the statute. 160 C. 397. Cited. 161 C. 32; 161 C. 182; 161 C. 430. Cited. 162 C. 23. Cited. 163 C. 49, 190. Power to vary ordinance in zoning board of appeals. 163 C. 453. "Congestion in the streets" means density of traffic, not overall volume. 164 C. 215. Cited. 165 C. 533, 543, 544. Cited. 166 C. 305. Cited. 168 C. 358. Cited. 172 C. 306. Cited. 173 C. 23, 28, 29. Cited. 174 C. 212, 213. Cited. 176 C. 479, 483; id., 581, 594. Cited. 177 C. 420, 423; 178 C. 657, 661, 663; 179 C. 650, 656, 657; 181 C. 230, 235, 236. Cited. 185 C. 135, 138; Id., 294, 305. Cited. 186 C. 106, 109. Commission was justified in considering drainage, historical and rural factors although these factors not specifically incorporated in the municipal regulations. 189 C. 261, 264, 265, 267. Cited. 193 C. 506, 517. Moratorium was not beyond the powers delegated by this statute. 194 C. 152, 153, 156, 159, 161, 164, 165. Cited. 199 C. 575, 582. Cited. 201 C. 700, 709, 711. Cited. 205 C. 703, 713. Includes "... the power to terminate nonconforming uses solely because of nonuse for a specified period." 206 C. 595, 597, 604, 607. Cited. 208 C. 146, 154, 155. Minimum floor area requirements held not to be rationally related to any legitimate purpose of zoning under the section. Id., 267, 270, 273, 275, 277, 279, 281, 283, 285, 289, 298, 304, 306, 307. "... statute has not delegated to municipalities the power to regulate colors in a sign." Id., 480, 481, 483, 484, 489, 492. Cited. 212 C. 570, 577, 583. Cited. 213 C. 604, 610. Cited. 214 C. 400, 405. Cited. 217 C. 103, 106, 107; Id., 447, 449, 451, 453, 455, 457. Cited. 220 C. 61, 62, 65, 68, 75, 76; Id., 527, 528, 532, 533, 535, 544, 551, 553, 554; Id., 584, 586, 599, 601; Id., 556, 568. Cited. 222 C. 216, 230; Id., 607, 614, 619. Cited. 224 C. 124, 130; Id., 823, 831. Cited. 225 C. 731, 748, 749, 751, 753. Cited. 227 C. 71, 98. Cited. 232 C. 122, 134, 146. Cited. Id., 419, 421, 428, 430. Cited. 234 C. 221, 235, 240, 242, 244. Cited. Id., 498, 505, 506. Cited. 6 CA 237. Violation of uniformity requirement of statute by creation of a buffer area discussed. Id., 686, 688, 691. Cited. 7 CA 684, 695. Cited. 10 CA 190, 194, 195. Cited. 12 CA 90, 95. Cited. 13 CA

159, 163; Id., 448, 450, 455, 456, 459; Id., 699, 705-707. Cited. 15 CA 110-115. Cited. 16 CA 303, 315. Zoning power "to regulate" under Sec. 8-2 does not include power "to prohibit" unless prohibition is supported by a rational relation to purposes of zoning. 17 CA 17, 28, 31, 32, 36, 37, 46, 47; judgment reversed, see 212 C. 570 et seq. Cited. 19 CA 334, 338. Cited. 21 CA 538, 542. Cited. 24 CA 5, 8, 9; Id., 526, 528-530. Cited. 25 CA 375, 379; Id., 392, 396, 400; judgment reversed, see 222 C. 607 et seq. Cited. 26 CA 212, 214. Cited. 28 CA 314, 321, 322. Cited. 30 CA 627, 628. Cited. 31 CA 643, 650. Cited. 35 CA 594, 598. Cited. Id., 820, 824, 825. Cited. 36 CA 98, 104. Cited. 37 CA 303, 308, 311-315. Cited. 40 CA 501-503, 507, 509-511.

Standards by which regulations are to be scrutinized. 15 CS 485. Change of zone classification of large lot in center of residential area to business is spot zoning. 16 CS 189. Cited. 16 CS 328. Where zoning ordinance attempted to zone by individual pieces of property, held not in accordance with comprehensive plan. 16 CS 422. Power of zoning commission to fix minimum lot sizes and minimum floor areas upheld. 19 CS 24. Cited. 19 CS 447. Omission of any direct mention of a mobile home park as a permitted use of land anywhere in a town does not render zoning law void or unconstitutional. 21 CS 275. In order to qualify as nonconforming use, use must be in existence when ordinance goes into effect or in such a state of preparation that it is naturally recognized in neighborhood as such a use. Id. Restrictive covenant and zoning restrictions are two entirely separate and unrelated limitations on use of property. Where deeds to all lots sold under general development scheme contain same restrictive covenants, each grantee is entitled to enforce them in absence of conduct on his part constituting laches, waiver or abandonment. 22 CS 235. Nonconforming use may be increased in extent by natural expansion and growth. 24 CS 221. Cited. 25 CS 277. Zoning commission has no statutory power to enact ordinance limiting occupancy of certain areas to elderly persons. 26 CS 128. To change nonconforming business use to nonconforming liquor use is an increase in use and zoning board of appeals acted arbitrarily, illegally and in abuse of discretion in denying plaintiff's appeal. 26 CS 457. Refusal of zoning variance to permit use of plaintiff's property as gasoline station, its claimed best use, was not an unconstitutional confiscation of their property. 26 CS 475. Change of zone dependent for proper functioning on action by other agencies over which zoning commission has no control cannot be sustained unless action appears not a possibility but a probability. 26 CS 503. Community as a whole must benefit from commission action. Id. Regulation of defendant zoning commission requiring gasoline station sites to be 1500 feet apart is an exercise of police power which plaintiff failed to prove unreasonable or confiscatory of his property's value. 27 CS 362. Cited. 30 CS 157, 164. Cited. 32 CS 217. Cited. 34 CS 177, 183. Cited. 35 CS 246, 249. Statute provides no authority to planning and zoning commissions to modify statutes under which they acquire authority. 36 CS 281, 284, 285. Cited. 39 CS 436, 440, 441. Cited. 41 CS 196, 203. Cited. 41 CS 593, 598. Cited. 42 CS 256, 261, 263, 278. Cited. 43 CS 373, 378.

Subsec. (a):

Cited. 224 C. 823, 831.

Cited. 40 CA 501, 503. Implicitly requires uniform enforcement of zoning regulations. 49 CA 669.

Cited. 36 CS 98, 104.

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**Sec. 8-2a. Copies of zoning and subdivision regulations to be available.** The secretary or clerk of each regulatory board of a political subdivision of the state, adopting subdivision or zoning regulations pursuant to the general statutes or a special act, shall make printed copies of such regulations available to the public at a reasonable price upon request.

(1961, P.A. 410.)

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**Sec. 8-2b. Use of maps of Soil Conservation Service as standard.** Any planning commission, zoning commission or planning and zoning commission of any municipality may use soil survey maps of the Soil Conservation Service of the United States Department of Agriculture as a standard in determining land use, planning, zoning or development regulations.

(1971, P.A. 132.)

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**Sec. 8-2c. Payment of a fee in lieu of parking requirements.** Notwithstanding the provisions of any special act, any town, city or borough having zoning authority pursuant to this chapter or any special act or planning authority pursuant to chapter 126 or any special act may, by regulation of the authority exercising zoning or planning power, provide that an applicant may be allowed to pay a fee to the town, city or borough in lieu of any requirement to provide parking spaces in connection with any use of land pursuant to any zoning or planning regulations adopted by such zoning or planning authority. Such regulation shall provide that no such fee shall be accepted by the town, city or borough unless the authority exercising zoning or planning power has found and declared that the number of parking spaces which would be required in connection with such use of land pursuant to any existing planning or zoning regulation: (1) Would result in an excess of parking spaces for such use of land or in the area surrounding such use of land; or (2) could not be physically located on the parcel of land for which such use is proposed and such regulation shall further provide that the amount of such fee shall be determined in accordance with a formula or schedule of fees set forth in such regulations and that no such fee shall be imposed or paid without the consent of the applicant and the zoning or planning authority, as the case may be. In any case in which a fee is proposed to be accepted in lieu of a parking requirement because the number of parking spaces required could not be physically located on the parcel of land for which such use is proposed, a two-thirds vote of the zoning or planning authority shall be necessary to consent to such payment. Such regulations may also limit the areas of such town, city or borough in which such payments shall be accepted by the town, city or borough. Any such payment to the town, city or borough shall be deposited in a fund established by the town, city or borough pursuant to this section. Such fund shall be used solely for the acquisition, development, expansion or capital repair of municipal parking facilities, traffic or transportation related capital projects, the provision or operating expenses of transit facilities designed to reduce reliance on private automobiles and capital programs to facilitate carpooling or vanpooling. The proceeds of such fund shall not be used for operating expenses of any kind, except operating expenses of transit facilities, or be considered a part of the municipal general fund. Expenditures from such fund shall be authorized in the same manner as any other capital expenditure of the town, city or borough. Any income earned by any moneys on deposit in such fund shall accrue to the fund.

(P.A. 84-497; P.A. 85-164, P.A. 90-286, S. 7, 9.)

History: P.A. 85-164 inserted provisions allowing payments in cases where parking could not be physically located on the subject parcel of land and requiring a two-thirds vote in such cases; P.A.

286 authorized the use of the proceeds of the fund for the "operating expenses" of transit facilities designed to reduce reliance on private automobiles.

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**Sec. 8-2d. Planned unit developments under former chapter 124a continue to be valid.** Any land use regulations concerning planned unit developments or planned residential developments adopted by a municipal zoning commission, planning and zoning commission or other applicable zoning authority pursuant to sections 8-13b to 8-13k, inclusive, of the general statutes, revision of 1958, revised to January 1, 1985, shall continue to be valid and any planned unit development or planned residential development proposed in accordance with such regulations which has received approval, whether tentative, preliminary or final, from such commission or authority prior to July 1, 1985, shall continue to be governed by the provisions of such regulations.

(P.A. 85-409, S. 6, 8.)

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**Sec. 8-2e. Municipal agreements regarding development rights.** Any two or more municipalities which have adopted the provisions of this chapter or chapter 125a or which are exercising zoning power pursuant to any special act may, with the approval of the legislative body of each municipality, execute an agreement providing for a system of development rights and the transfer of development rights across the boundaries of the municipalities which are parties to the agreement. Such system shall be implemented in a manner approved by the legislative body of each municipality and by the commission or other body which adopts zoning regulations of each municipality.

(P.A. 87-490, S. 2.)

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**Sec. 8-2f. Joint applications necessary for transfer of development rights.** Any zoning regulations adopted pursuant to section 8-2 concerning development rights shall authorize the transfer of the development rights to land only upon joint application of the transferor and transferee.

(P.A. 87-490, S. 3.)

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**Sec. 8-2g. Special exemption from density limits for construction of affordable housing. (a)** Notwithstanding the provisions of any special act, any zoning commission existing pursuant to this chapter and any municipal agency exercising the powers of a zoning commission pursuant to any special act may provide by regulation for a special exemption from density limits established for any zoning district, or special exception use, in which multifamily dwellings are permitted, in accordance with the requirements contained in subsection (b) of this section. Such special exemption shall allow the construction of a designated number of such permitted multifamily dwelling units in excess of applicable density limits, in accordance with a contract entered into between a developer applying for the special exemption and the municipality. Any such contract shall provide: (1) For each dwelling unit constructed by the developer in excess of the number of such units permitted by applicable density limits, the developer shall construct in the municipality a unit of affordable housing, as defined in section 8-39a, which is of comparable size and workmanship; (2) for a period which shall not be less than thirty years

from the date of completion of any units of affordable housing constructed pursuant to subdivision (1) of this subsection, such units of affordable housing shall be offered for sale or rent only to persons and families having such income as the agency created or designated under subsection (b) of this section may establish but which shall not exceed the area median income of the municipality as determined by the United States Department of Housing and Urban Development; (3) the sale price or rent for any such unit of affordable housing shall not exceed an amount which shall be specified in such contract, provided such contract shall contain provisions concerning reasonable periodic increases of the specified sale price or rent; (4) such units of affordable housing shall be conveyed by deeds containing covenants incorporating the terms and conditions contained in such contract between the developer and the municipality, which covenants shall run with the land and be enforceable by the municipality until released by the municipality; and (5) the requirements of subdivisions (1) to (4), inclusive, of this subsection shall apply to (A) the resale, (B) the purchase and subsequent leasing and (C) the conversion to the common interest form of ownership and subsequent sale of any such unit of affordable housing during and for the remaining term of such period.

(b) Upon the adoption of any regulation under subsection (a) of this section, the zoning commission or municipal agency exercising the powers of a zoning commission shall notify the legislative body of the municipality of such adoption and request that the municipality establish or designate an agency to implement a program designed to establish income criteria in accordance with said subsection (a) and oversee the sale or rental of any units of affordable housing constructed pursuant to said subsection (a) to persons and families satisfying such income criteria. Any municipality may, by ordinance, establish or designate a municipal agency to implement such program. If the legislative body does not enact such ordinance within one hundred twenty days following the date of such request, the zoning commission or municipal agency exercising the powers of a zoning commission may notify the housing authority of the municipality or, in any municipality which has not by resolution authorized its housing authority to transact business in accordance with the provisions of section 8-40, the municipal agency with responsibility for housing matters that it has adopted such regulation. Upon receiving such notice, the housing authority or municipal agency with responsibility for housing matters shall implement such program. Any such program shall provide for a method of selecting persons satisfying such income criteria to purchase or rent such units of affordable housing from among a pool of applicants which method shall not discriminate on the basis of age, gender, race, creed, color, national origin, ancestry, marital status, mental retardation, physical disability, including, but not limited to, blindness or deafness, place of residency, number of children or veterans' status.

(c) Nothing in this section shall be construed to limit any powers lawfully exercised by any municipality, any zoning commission existing pursuant to this chapter or any municipal agency exercising the powers of a zoning commission pursuant to any special act. Nothing in this section shall be construed to invalidate any ordinance of a municipality or any regulation of a zoning commission existing pursuant to this chapter or any municipal agency exercising the powers of a zoning commission pursuant to any special act, which ordinance or regulation was adopted before June 6, 1988. Nothing in this section shall be construed to prohibit any such municipality, zoning commission or municipal agency from changing the requirements contained in any ordinance or zoning regulation or to require any such municipality, zoning commission or municipal agency to change the requirements contained in any ordinance or zoning regulation.

(P.A. 88-338, S. 1, 5 )

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**Sec. 8-2h. Zoning applications filed prior to change in zoning regulations not required to comply with change. Applications for building permit or certificate of occupancy filed prior to adoption of zoning regulations not required to comply with regulations.** (a) An application filed with a zoning commission, planning and zoning commission, zoning board of appeals or agency exercising zoning authority of a town, city or borough which is in conformance with the applicable zoning regulations as of the time of filing shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, any change in the zoning regulations or the boundaries of zoning districts of such town, city or borough taking effect after the filing of such application.

(b) An application for a building permit or certificate of occupancy filed with the building official of a city, town or borough prior to the adoption of zoning regulations by such city, town or borough in accordance with this chapter shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, such zoning regulations.

(P.A. 89-311, S. 2.)

Cited. 220 C. 527, 541. P.A. 89-311 cited. 225 C. 1, 2, 9.

Cited. 25 CA 199, 209. Cited. 26 CA 212, 214, 217, 218.

Subsec. (a):

Cited. 220 C. 527, 540, 541.

Cited. 26 CA 212, 214. Cited. 28 CA 314, 318; Id., 379, 383. Cited. 40 CA 501, 506, 507. Cited. Id., 840, 844.

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**Sec. 8-2i. Inclusionary zoning.** (a) As used in this section, "inclusionary zoning" means any zoning regulation, requirement or condition of development imposed by ordinance, regulation or pursuant to any special permit, special exception or subdivision plan which promotes the development of housing affordable to persons and families of low and moderate income, including, but not limited to, (1) the setting aside of a reasonable number of housing units for long-term retention as affordable housing through deed restrictions or other means; (2) the use of density bonuses or (3) in lieu of or in addition to such other requirements or conditions, the making of payments into a housing trust fund to be used for constructing, rehabilitating or repairing housing affordable to persons and families of low and moderate income.

(b) Notwithstanding the provisions of any special act, any municipality having zoning authority pursuant to this chapter or any special act or having planning authority pursuant to chapter 126 may, by regulation of the body exercising such zoning authority, implement inclusionary zoning regulations, requirements or conditions.

(P.A. 91-204.)

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**Sec. 8-2j. Village districts. Compatibility objectives with other uses in immediate neighborhood. Applications. Village district consultant.** (a) The zoning commission of each municipality may establish village districts as part of the zoning regulations adopted under section 8-2 or under any special act. Such districts shall be located in areas of distinctive character, landscape or historic value that are specifically identified in the plan of conservation and development of the municipality.

(b) The regulations establishing village districts shall protect the distinctive character, landscape and historic structures within such districts and may regulate, on and after the effective date of such regulations, new construction, substantial reconstruction and rehabilitation of properties within such districts and in view from public roadways, including, but not limited to, (1) the design and placement of buildings, (2) the maintenance of public views, (3) the design, paving materials and placement of public roadways, and (4) other elements that the commission deems appropriate to maintain and protect the character of the village district. In adopting the regulations, the commission shall consider the design, relationship and compatibility of structures, plantings, signs, roadways, street hardware and other objects in public view. The regulations shall establish criteria from which a property owner and the commission may make a reasonable determination of what is permitted within such district. The regulations shall encourage the conversion, conservation and preservation of existing buildings and sites in a manner that maintains the historic or distinctive character of the district. The regulations concerning the exterior of structures or sites shall be consistent with: (A) The "Connecticut Historical Commission - The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", revised through 1990, as amended; or (B) the distinctive characteristics of the district identified in the municipal plan of conservation and development. The regulations shall provide (i) that proposed buildings or modifications to existing buildings be harmoniously related to their surroundings, and the terrain in the district and to the use, scale and architecture of existing buildings in the district that have a functional or visual relationship to a proposed building or modification, (ii) that all spaces, structures and related site improvements visible from public roadways be designed to be compatible with the elements of the area of the village district in and around the proposed building or modification, (iii) that the color, size, height, location, proportion of openings, roof treatments, building materials and landscaping of commercial or residential property and any proposed signs and lighting be evaluated for compatibility with the local architectural motif and the maintenance of views, historic buildings, monuments and landscaping, and (iv) that the removal or disruption of historic traditional or significant structures or architectural elements shall be minimized.

(c) All development in the village district shall be designed to achieve the following compatibility objectives: (1) The building and layout of buildings and included site improvements shall reinforce existing buildings and streetscape patterns and the placement of buildings and included site improvements shall assure there is no adverse impact on the district; (2) proposed streets shall be connected to the existing district road network, wherever possible; (3) open spaces within the proposed development shall reinforce open space patterns of the district, in form and siting; (4) locally significant features of the site such as distinctive buildings or sight lines of vistas from within the district, shall be integrated into the site design; (5) the landscape design shall complement the district's landscape patterns; (6) the exterior signs, site lighting and accessory structures shall support a uniform architectural theme if such a theme exists and be compatible with their surroundings; and (7) the scale, proportions, massing and detailing of any proposed building shall be in proportion to the scale, proportion, massing and detailing in the district.

(d) All applications for new construction and substantial reconstruction within the district and in view from public roadways shall be subject to review and recommendation by an architect or architectural firm, landscape architect, or planner who is a member of the American Institute of Certified Planners selected and contracted by the commission and designated as the village district consultant for such application. Alternatively, the commission may designate as the village district consultant for such application an architectural review board whose members shall include at least one architect, landscape architect or planner who is a member of the American Institute of Certified Planners. The village district consultant shall review an application and report to the commission within thirty-five days of receipt of

the application. Such report and recommendation shall be entered into the public hearing record and considered by the commission in making their decision. Failure of the village district consultant to report within the specified time shall not alter or delay any other time limit imposed by the regulations.

The commission may seek the recommendations of any town or regional agency or outside specialist with which it consults, including, but not limited to, the regional planning agency, the municipality's historical society, the Connecticut Trust for Historic Preservation and The University of Connecticut College of Agriculture and Natural Resources. Any reports or recommendations from such agencies or organizations shall be entered into the public hearing record.

(f) If the commission grants or denies an application, it shall state upon the record the reasons for its decision. If a commission denies an application, the reason for the denial shall cite the specific regulations under which the application was denied. Notice of the decision shall be published in a newspaper having a substantial circulation in the municipality. An approval shall become effective in accordance with subsection (b) of section 8-3c.

(g) No approval of a commission under this section shall be effective until a copy thereof, certified by the commission, containing the name of the owner of record, a description of the premises to which it relates and specifying the reasons for its decision, is recorded in the land records of the town in which such premises are located. The town clerk shall index the same in the grantor's index under the name of the then record owner and the record owner shall pay for such recording.

(P.A. 98-116; P.A. 00-145, S. 1.)

History: P.A. 00-145 divided existing Subsec. (a) into Subsecs. (a) and (b) and existing Subsec. (c) into Subsecs. (d) and (e), amended Subsec. (a) to require districts to be located in areas identified on the plan of conservation and development, amended Subsec. (d) to include landscape architects and planners in review and authorize an architectural review board to act as the village district consultant, deleted former Subsec. (e) which had defined "neighborhood", inserted new provisions as Subsec. (f) re approval or disapproval, relettered former Subsec. (d) as (g) and made numerous technical changes throughout.

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**Sec. 8-3. Establishment and changing of zoning regulations and districts. Enforcement of regulations. Certification of building permits and certificates of occupancy site plans. District for water-dependent uses.** (a) Such zoning commission shall provide for the manner in which regulations under section 8-2 or 8-2j and the boundaries of zoning districts shall be respectively established or changed. No such regulation or boundary shall become effective or be established or changed until after a public hearing in relation thereto, held by a majority of the members of the zoning commission or a committee thereof appointed for that purpose consisting of at least five members, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the form of a legal advertisement appearing in a newspaper having a substantial circulation in such municipality at least twice at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days, before such hearing, and a copy of such proposed regulation or boundary shall be filed in the office of the town, city or borough clerk, as the case may be, in such municipality, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, for public inspection at least ten days before such hearing, and may be published in full in such paper. In addition to such notice, such zoning commission may, by regulation, provide for notice by mail to persons who are owners of land which is included in or adjacent to the land which is the subject of the hearing. The commission may



require a filing fee to be deposited with the commission to defray the cost of publication of the notice required for a hearing.

(b) Such regulations and boundaries shall be established, changed or repealed only by a majority vote of the members of the zoning commission, except as otherwise provided in this chapter. If a protest against a proposed change is filed at or before a hearing with the zoning commission, signed by the owners of twenty per cent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the commission.

(c) All petitions requesting a change in the regulations or the boundaries of zoning districts shall be submitted in writing and in a form prescribed by the commission and shall be considered at a public hearing within the period of time permitted under section 8-7d. The commission shall adopt or deny the changes requested in such petition. Whenever such commission makes any change in a regulation or boundary it shall state upon its records the reason why such change is made. No such commission shall be required to hear any petition or petitions relating to the same changes, or substantially the same changes, more than once in a period of twelve months.

(d) Zoning regulations or boundaries or changes therein shall become effective at such time as is fixed by the zoning commission, provided a copy of such regulation, boundary or change shall be filed in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the office of both the district clerk and the town clerk of the town in which such district is located, and notice of the decision of such commission shall have been published in a newspaper having a substantial circulation in the municipality before such effective date. In any case in which such notice is not published within the fifteen-day period after a decision has been rendered, any applicant or petitioner may provide for the publication of such notice within ten days thereafter.

The zoning commission shall provide for the manner in which the zoning regulations shall be enforced.

(f) No building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations.

(g) The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building, use or structure with specific provisions of such regulations. If a site plan application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, the applicant shall submit an application for a permit to the agency responsible for administration of the inland wetlands regulations not later than the day such application is filed with the zoning commission. The decision of the zoning commission shall not be rendered on the site plan application until the inland wetlands agency has submitted a report with its final decision. In making its decision the zoning commission shall give due consideration to the report of the inland wetlands agency. A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations. Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d. A certificate of approval of any plan for which the period for approval has expired and on which no action has been taken shall be sent to the applicant within fifteen days of the date on which the period for approval has expired. A decision to deny or modify a site plan shall set forth the reasons for such denial or modification. A copy of any decision shall be sent by certified mail to the person who submitted such plan within fifteen days after such decision is rendered. The zoning commission may, as a condition of approval of any modified site plan, require a bond in an amount and with surety and conditions

satisfactory to it, securing that any modifications of such site plan are made or may grant an extension of the time to complete work in connection with such modified site plan. The commission may condition the approval of such extension on a determination of the adequacy of the amount of the bond or other security furnished under this section. The commission shall publish notice of the approval or denial of site plans in a newspaper having a general circulation in the municipality. In any case in which such notice is not published within the fifteen-day period after a decision has been rendered, the person who submitted such plan may provide for the publication of such notice within ten days thereafter.

(h) Notwithstanding the provisions of the general statutes or any public or special act or any local ordinance, when a change is adopted in the zoning regulations or boundaries of zoning districts of any town, city or borough, no improvements or proposed improvements shown on a site plan for residential property which has been approved prior to the effective date of such change, either pursuant to an application for special exception or otherwise, by the zoning commission of such town, city or borough, or other body exercising the powers of such commission, and filed or recorded with the town clerk, shall be required to conform to such change.

(i) In the case of any site plan approved on or after October 1, 1984, except as provided in subsection (j) of this section, all work in connection with such site plan shall be completed within five years after the approval of the plan. The certificate of approval of such site plan shall state the date on which such five-year period expires. Failure to complete all work within such five-year period shall result in automatic expiration of the approval of such site plan, except in the case of any site plan approved on or after October 1, 1989, the zoning commission or other municipal agency or official approving such site plan may grant one or more extensions of the time to complete all or part of the work in connection with the site plan provided the total extension or extensions shall not exceed ten years from the date such site plan is approved. "Work" for purposes of this subsection means all physical improvements required by approved plan.

(j) In the case of any site plan for a project consisting of four hundred or more dwelling units approved on or after June 19, 1987, all work in connection with such site plan shall be completed within ten years after the approval of the plan. In the case of any commercial, industrial or retail project having an area equal to or greater than four hundred thousand square feet approved on or after October 1, 1988, the zoning commission or other municipal agency or official approving such site plan shall set a date for the completion of all work in connection with such site plan, which date shall be not less than five nor more than ten years from the date of approval of such site plan, provided such commission, agency or official approving such plan and setting a date for completion which is less than ten years from the date of approval may extend the date of completion for an additional period or periods, not to exceed ten years in the aggregate from the date of the original approval of such site plan. The certificate of approval of such site plan shall state the date on which such work shall be completed. Failure to complete all work within such period shall result in automatic expiration of the approval of such site plan. "Work" for purposes of this subsection means all physical improvements required by the approved plan.

(k) A separate zoning district may be established for shorefront land areas utilized for water-dependent uses, as defined in section 22a-93, existing on October 1, 1987. Such district may be composed of a single parcel of land, provided the owner consents to such establishment. The provisions of this section shall not be construed to limit the authority of a zoning commission to establish and apply land use districts for the promotion and protection of water-dependent uses pursuant to section 8-2 and sections 22a-101 to 22a-104, inclusive. The provisions of this subsection shall apply to all zoning commissions or their final zoning authority of each municipality whether or not such municipality has adopted the provisions of this chapter or the charter of such municipality or special act establishing zoning in the municipality contains similar provisions.

(l) Notwithstanding the provisions of this section to the contrary, any site plan approval made under this section on or before October 1, 1989, except an approval made under subsection (j) of this section, shall expire not more than seven years from the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such site plan, provided the time for all extensions under this subsection shall not exceed ten years from the date the site plan was approved.

(1949 Rev., S. 838; 1951, 1953, June, 1955, S. 375d; 1957, P.A. 662; 1959, P.A. 452; 577, S. 4; 614, S. 3; February, 1965, P.A. 622, S. 1; 1971, P.A. 862, S. 1; P.A. 77-450, S. 1; 77-509, S. 2; P.A. 78-104, S. 4; P.A. 80-177; P.A. 82-90; P.A. 84-147, S. 1; 84-174; P.A. 86-236, S. 1; P.A. 87-215, S. 2, 7; 87-371, S. 2, 5; 87-474, S. 2; 87-533, S. 7, 14; P.A. 88-105, S. 1; P.A. 89-277, S. 2; 89-356, S. 10, 11; P.A. 91-153, S. 1; P.A. 93-19, S. 1, 3; P.A. 00-145, S. 2.)

History: 1959 acts provided notice of hearing be published "in the form of a legal advertisement appearing" in a newspaper, provided for filing of copy of regulations and proposed regulations in case of district, provided protest of change to be effective must be signed by at least twenty per cent of property owners within five hundred feet "in all directions" rather than "in any direction" and that a two-thirds rather than three-quarters vote of commission is needed to overcome protest, allowed petitions for change in regulations as well as boundaries and added "or substantially the same changes" in the last sentence; 1965 act required copy of zoning regulations, boundaries or changes in the case of a district be filed with both district and town clerk and specified notice of decision of commission, rather than of the filing of the regulation, boundary or change, be published; 1971 act required that hearing be held within sixty-five, rather than ninety, days after receipt of petition, that decision be made within sixty-five, rather than ninety, days after hearing and that extensions not exceed sixty-five days; P.A. 77-450 made provisions of Sec. 8-7d applicable to changes and amendments and replaced sixty-five day periods for filing, decision and extension with time period permitted under Sec. 8-7d; P.A. 77-509 divided section into subsections, placed provision for filing fee in Subsec. (a) rather than Subsec. (c), required recording of reasons for making changes in Subsec. (c) and added Subsecs. (d) to (g), inclusive, re effective dates, enforcement, building permits and site plans; P.A. 78-104 amended Subsec. (g) to specify that site plans may be modified or denied only for noncompliance and to replace reference to sixty-five day period for decision or extensions with reference to time periods in Sec. 8-7d; P.A. 80-177 amended Subsec. (g) concerning posting of bond as condition of approval; P.A. 82-90 amended Subsec. (g) to provide for issuance of a certificate of approval upon the expiration of the time limit and for the publication of notices of approval; P.A. 84-147 added Subsecs. (h) and (i) concerning the effect of subsequent zoning changes on approved site plans and expiration of site plan approval; P.A. 84-174 amended Subsec. (f) to include certificates of occupancy; P.A. 86-236 amended Subsec. (g) to require the commission to publish notice of the denial of site plans; P.A. 87-215 amended Subsec. (a) to allow for notice by mail to included and adjacent landowners; P.A. 87-371 added Subsec. (j) concerning completion of work on site plans for projects consisting of four hundred or more dwelling units; P.A. 87-474 added Subsec. (k) regarding separate zoning districts for shorefront land areas utilized for dependent uses; P.A. 87-533 amended Subsec. (g) to add provision re site plan applications involving activities regulated under Secs. 22a-36 to 22a-45, inclusive; P.A. 88-105 amended Subsec. (j) to provide for expiration of site plan approval in the case of certain commercial, industrial or retail projects; P.A. 89-277 amended Subsec. (i) to authorize the granting of one or more extensions of the five-year period for site plans approved on or after October 1, 1989, and limited the total extension or extensions to ten years; P.A. 89-356 amended Subsec. (d) to authorize any applicant or petitioner for a change in zoning regulations or boundaries to provide for publication of the notice of the decision of the commission when such notice is not published in a timely manner and amended Subsec. (g) to authorize the person who submitted a site plan

application to provide for the publication of the notice of the decision of the commission when such notice is not published in a timely manner; P.A. 91-153 added Subsec. (l) which provided that site plans approved on or before October 1, 1989, be valid for seven years after the date of approval; P.A. 93-19 amended Subsec. (g) to authorize planning commissions to extend the time to complete work on a modified site plan and to condition such approval in determination of the adequacy of the bond, amended Subsec. (i) to replace reference to a five-year period with provisions re completion of work and amended Subsec. (l) to authorize extensions of site plans approved on or before October 1, 1989, effective April 21, 1993; P.A. 00-145 amended Subsec. (a) to add reference to Sec. 8-2j.

Change invalid if notice not in compliance with statute. 123 C. 472. Cited. 123 C. 541; 125 C. 720; 133 C. 594. When protested, change by town zoning commission requires vote of all members, not merely of those present at meeting. 123 C. 282. Failure to state on record reason for change of regulation does not invalidate board's action. 129 C. 287. Ordinance invalid for failure to give notice and hold hearing. 131 C. 649. Does not apply to a proceeding pending on effective date of act. 134 C. 572. Husband of applicant sat at meeting and voted for application. Held: Change of zone is invalid. 135 C. 1. Words "immediately adjacent" mean adjoining or abutting. 135 C. 24. Cited. 136 C. 94. Special act controls in West Hartford at least as to procedural matters. 138 C. 497. Cited. 141 C. 349. Zoning regulations shall be made in accordance with "a comprehensive plan" which is a general plan to control and direct use and development of property in municipality or large part thereof by dividing it into districts according to present and potential use of properties. 142 C. 265. Zoning commission need not set out reasons for amendment and change of zoning regulations in language which would satisfy meticulous criticism of a legal expert. 142 C. 580. Nothing in this section which permits vote of town meeting to approve any amendment adopted by zoning commission. Power to provide for manner in which zoning regulations may be changed is vested exclusively in commission and cannot be delegated to town meeting. 143 C.

3. Compliance with statutory procedure was prerequisite to any valid and effective date change in zonal boundaries. 144 C. 475. Words "immediately adjacent in the rear," as similarly used in special act, construed. 144 C. 677. Adequacy of notice. 144 C. 690. In computing notice period, both terminal days are excluded when such phrases as "at least" and "not less than" are used. 145 C. 136. Compliance with statutory procedure was a prerequisite to any valid amendment of, or change in, zoning regulations. *Id.* Legislative history. Words "in any direction" mean "all or every direction" (former statute). 145 C. 325. Zone change in substantial conformity with comprehensive plan held not spot zoning. 145 C. 435. Prior conferences with applicant and experts did not compel conclusion that commission made up its mind before public hearing. Dissent held otherwise. *Id.* Regulation which does not clearly state boundaries of zone not ipso facto a nullity. 145 C. 468. An orderly extension of an existing district to serve a public need is not spot zoning. 145 C. 592. Commission acts in a legislative capacity; board of appeals acts in a quasi-judicial capacity. *Id.* Disregard of zoning regulations regarding traffic congestion and allowing access to commercial property through residential area constitutes illegal action by board. 145 C. 597. Notice is adequate if it sufficiently appraises those who may be affected of nature and character of action proposed. 145 C. 625. Exempting shopping centers from certain liquor regulations held reasonable. *Id.* Classification is duty of legislative body. *Id.* Delay in prosecuting violation by commission not deemed waiver. 145 C. 682. Purchasers of property have right to expect that classification will not change unless new conditions arise which demand rezoning for public good. 146 C. 170. Fact that person other than member of commission acted as moderator at public hearing does not of itself invalidate such hearing. 146 C. 531. Upgrading of zone in residential semirural area is type of regulation generally upheld. *Id.* Commission must state upon its records its reason for changing zoning regulation or boundaries of zoning district and such statement should contain only such reasons as motivated commission as collective body. 147 C. 30. Extension of existing business zone held to constitute spot zoning. *Id.*

Stamford charter provides for review of action of zoning board by board of representatives; held that function of latter board is legislative and it may act without notice and hearing. 148 C. 33. Unless charter expressly states otherwise, once zoning commission has adopted zoning regulations, municipality is powerless to amend them. *Id.* When zoning authorities act within their prescribed legislative powers, they have a wide and liberal discretion. 148 C. 68. If change of zone is in accordance with comprehensive plan and predominating purpose in making change is to benefit community as a whole rather than landowner, this does not constitute spot zoning even though owner may receive an incidental benefit. *Id.* Denial of petition pending action of planning commission, held not to constitute surrender of its functions to planning commission. 148 C. 172. Denial of an application "without prejudice" may permit a renewal of such application without waiting twelve months. *Id.* Possible that denial of an application "without prejudice" may raise a question whether such matter is appealable. *Id.* Rule that zoning board of appeals cannot reverse an earlier decision unless there are changed conditions does not necessarily apply to zoning commission, which is essentially a legislative body. 148 C. 299. Provision that board shall state upon its records its reasons for making a change is directory only, and failure to comply does not make action of commission void. *Id.* Test of board's power to change zone is whether change is for benefit of community as a whole rather than for benefit of particular individual or groups of individuals. 148 C. 492. Commission tabled application for zone change pending receipt of additional information to support such change but later approved application without obtaining such information; held commission was motivated by individual welfare of petitioner and not the common good. 148 C. 500. In making change in zone, commission must follow mandates of section 8-2. *Id.* An important purpose of zoning is to lessen congestion in streets. *Id.* Appeals from zoning authorities exist only under statutory authority. 148 C. 551. Stamford charter provides for review of the action of its zoning board in amending zoning map either by direct appeal to court or by petition to legislative body and then an appeal to court from such body's decision; held that each method is complete in itself and having pursued one, a party is precluded from pursuing the other. *Id.* Strict compliance with statute is prerequisite to zoning action. 149 C. 76. Legislative history. *Id.*, 77. Where former statute provided, if adequate protest is filed, no zone change can be made "except by a vote of two-thirds of all the members of the zoning commission" held, an affirmative two-thirds vote of authorized membership of commission is required. *Id.*, 78. Failure of zoning commission to state on its records any reasons for zone change did not render action void. 149 C. 411. Cited. 149 C. 680, 682. Not spot zoning if change results in good of community as a whole and falls within requirements of comprehensive plan. 150 C. 646. Prior to 1963 amendment of section 8-7: When no reason given for denial of application for special exception, court must search record to discover sufficient reason to support decision. No statutory requirement for giving reason for denial. 151 C. 265. Change of small area from one residential classification to another residential classification does not of itself constitute "spot zoning." 151 C. 425. Elements constituting "spot zoning" discussed. 152 C. 7. Cited. 152 C. 311. "Due process" requirements not violated because plaintiff did not receive actual notice of zoning ordinance since adoption of ordinance affected every property owner in the town and such a rule would nullify statutory provision for notice by publication. 152 C. 325. Fact that zoning regulations were designated as "interim" does not make them invalid. 153 C. 187. Cited. 153 C. 483. Board not required to state a reason for denying a change of zone. 153 C. 574, 576. Change of zone which is dependent for its proper functioning on action by other agencies and over which zoning commission has no control cannot be sustained unless the necessary action appears to be a probability. 154 C. 202, 210. Claim public hearing statutory provision violated not considered as not raised or passed by trial court. 154 C. 463. Variances should be granted charily. Where plaintiff applied for a substantial variance of set back requirements and board denied application upon grounds of public convenience and welfare, appeal denied. 154 C. 484. Notice and filing of zone changes actually adopted

distinct from, independent of and in addition to prehearing notice and filing. 155 C. 12, 16. Filing of map prior to hearing not required unless integral part of proposed regulations. *Id.*, 20. Statute does not require retention by town clerk of proposed zoning regulations after public hearing on same. *Id.* Notice stating that among proposed changes in the zoning regulations was repeal of a paragraph specified by section and subsection numbers held sufficient. 155 C. 511. Cited. 156 C. 103. Where public notice contained text of proposed zoning amendment, notice was sufficient although adopted amendment differed from proposal so as to affect plaintiffs' interests; fundamental character was not changed. 157 C. 303. Decision rendered after sixty days is not invalid; language of the section is directory only. *Id.*, 520. Power to grant variance must be sparingly exercised and financial hardship alone is not sufficient grounds for granting variance. 158 C. 86. Cited. 160 C. 295. Member of zoning commission absent from public hearing may vote on proposed changes if he sufficiently acquaints himself with evidence presented at hearing. 161 C. 32. One publication in two newspapers, proper notice. 163 C. 45. Cited. 166 C. 207. Where zoning authority has stated reasons for zone change, reviewing court limits determinations to whether assigned grounds are pertinent and reasonably supported by the record. 166 C. 533, 543. Application of a "floating zone" to land in a town requires an application for change of zone and a public hearing as to the particular property or area. 168 C. 20. The zoning commission acts arbitrarily and violates the statutory uniformity requirement when it attempts to establish a buffer zone between two zones with different classifications in a specific instance but not in other instances. 168 C. 358. Cited. 168 C. 512. Cited. 170 C. 61. Cited. 173 C. 23, 25. Cited. 176 C. 439, 441. Cited. 178 C. 657, 662. Cited. 186 C. 106, 109. Cited. 194 C. 152, 164. Cited. 195 C. 276, 280. Cited. 213 C. 604, 608, 609. Cited. 218 C. 65, 79, 80. Cited. 219 C. 139, 142. Cited. 220 C. 455, 461. Cited. 222 C. 380, 382. Cited. 232 C. 122, 132, 148. Cited. 235 C. 448, 464.

Cited. 2 CA 49, 50. Cited. *Id.*, 506, 509. Cited. 6 CA 686, 689 691. Cited. 7 CA 684, 695. Cited. 13 CA 3, 449, 452. Cited. 17 CA 150. Cited. 18 CA 85, 88, 90, 92. Cited. 23 CA 232, 241. Cited. 25 CA 164, 167, 168. Cited. 27 CA 443, 447. Cited. 41 CA 89, 92.

Improper for zoning board not to state upon its record the reasons it granted a variance. 10 CS 340. Cited. 13 CS 59. History. 13 CS 330. Compared with former statute. 15 CS 413. Protest against change of zone may be filed any time before final definitive action changing zone. 16 CS 42. In term "at least ten days before the hearing" neither terminal date can be included in the computation of the period. 19 CS 441. Relationship through marriage of real estate agent assisting in development to zoning official not a disqualifying factor when official's vote was not necessary to decision. 19 CS 448. Persons who have signed a protest petition may not, in the absence of fraud, withdraw their names after the public hearing has been closed or concluded; history of section reviewed. 20 CS 83. News stories mentioning a public hearing held not to constitute notice. 21 CS 78. This section and sections 8-8 and 8-9 are not so linked that the date of publication of the notice must be considered as the date the decision was rendered. 26 CS 88. Cited. 26 CS 169. Where information obtained at an ex parte meeting and public hearing were obviously taken into consideration by commission members at another public hearing some eight months later, procedure was improper since zone change opponents were given no opportunity to ascertain subordinate facts. 26 CS 500; or cross-examine. *Id.*, 501. Where town's zoning regulations make no provision for amendment or repeal, this section controls amendments and repeals. 28 CS 278. Adoption of zoning regulations on Sunday is illegal conduct of secular business. 31 CS 440. Cited 35 CS 246, 247. Cited. 36 CS 281, 285. Cited. 38 CS 492, 494; *Id.*, 590, 592. Cited. 39 CS 426, 427.

Subsec. (a):

Cited. 211 C. 78, 83. Strict compliance with section prerequisite to amending town zoning regulations. 222 C. 374, 375, 377 380.

Cited. 17 CA 150, 153 155. Cited. 20 CA 705, 706. Cited. 25 CA 164, 167; *Id.*, 611, 615; judgment

reversed, see 223 C. 171 et seq. Cited. 30 CA 454, 456, 460-462. Failure to accurately describe subject property was inadequate notice for public hearing. 50 CA 517.

Subsec. (b):

Cited. 212 C. 471, 472, 474, 475. Cited. 219 C. 139, 142, 143, 146-149. Cited. 224 C. 44, 47. Cited. 235 C. 417, 421, 425.

Cited. 1 CA 621, 626.

Subsec. (c):

Cited. 213 C. 604, 607. Cited. 219 C. 139, 149. Cited. 220 C. 556, 567.

Cited. 23 CA 256, 257. Cited. 28 CA 314, 326.

Cited. 41 CS 218, 221, 222.

Subsec. (d):

Cited. 211 C. 78, 80, 83. Cited. 220 C. 556, 567.

Cited. 30 CA 454, 457. Although compliance with notice requirement is mandatory for zone change to be effective, timing of notice is directory and commission was allowed to fix new effective date and publish required notice. 53 CA 182.

Subsec. (e):

Cited. 186 C. 106, 111, 114. Cited. 221 C. 374, 378.

Subsec. (f):

Cited. 186 C. 106, 112. Cited. 192 C. 367, 371. Cited. 221 C. 374, 378. Cited. 225 C. 575, 590.

Cited. 6 CA 284, 286, 289.

Subsec. (g):

Cited. 192 C. 353, 358-364. Cited. 194 C. 152, 158. Cited. Id., 187, 192, 196. Cited. 211 C. 331, 332, 334-337. Cited. 215 C. 527, 529. Cited. 222 C. 262, 267; Id., 269, 274, 275; Id., 607, 613; Id., 911. Cited.

23 C. 171, 178. Cited. 224 C. 44, 47, 49, 50; Id., 96, 100; Id., 106, 109; Id., 924. Cited. 225 C. 432, 434, 436, 438, 439, 441-444; Id., 575, 577, 580-587. Cited. 226 C. 579, 593; Id., 684, 692. Cited. 227 C. 799-801.

Cited. 2 CA 489, 491. Cited. Id., 506, 509, 512. Cited. 3 CA 556, 557, 560, 561, 564. Cited. 6 CA 284, 286. Cited. 7 CA 684, 686, 694-700. Cited. 15 CA 561, 562, 564-568. Cited. 17 CA 405, 407. Cited. 25 CA 392, 396, 397; judgment reversed, see 222 C. 607 et seq. Cited. 28 CA 314, 331, 332. Cited. 29 CA 1, 6; Id., 469-472, 475, 479-481. P.A. 87-533 cited. Id. Cited. 35 CA 317, 319, 321-323, 325. Cited. Id., 599, 604.

Cited. 38 CS 492, 494.

Subsec. (i):

Cited. 17 CA 405, 409, 412, 416.

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**Sec. 8-3a. Findings of consistency of proposed regulations or boundaries with the plan of development. Referral of proposed regulations or boundaries to planning commission.** (a) In any municipality which has a combined planning and zoning commission operating under the general statutes or any special act, the commission shall state on the record its findings on consistency of a proposed zoning regulation or boundaries or changes thereof with the plan of development of the municipality. (b) In any municipality which has a separate zoning commission operating under the provisions of this chapter or any special act and which also has a planning commission operating under the general statutes or any special act, proposed zoning regulations or boundaries or changes thereof shall be referred to such

planning commission for a report at least thirty-five days prior to the date assigned for a public hearing to be held thereon. The report shall contain the findings of the planning commission on consistency of a proposed regulation or boundaries or changes thereof with the plan of development of the municipality and any other recommendations the planning commission deems relevant. The failure of the planning commission to report prior to or at the hearing shall be taken as approval of such proposals. The report concerning consistency with the plan of development and a statement of the vote of the planning commission approving, disapproving or proposing a modification of such proposal shall be publicly read at any public hearing held thereon. The full report of the planning commission regarding such proposal shall include the reasons for the commission's vote thereon and shall be incorporated into the records of any public hearing held thereon by the zoning commission. A proposal disapproved by the planning commission may be adopted by the zoning commission by a vote of not less than two-thirds of all the members of the zoning commission.

(1959, P.A. 614, S. 5; 1971, P.A. 862, S. 2; P.A. 91-398, S. 1.)

History: 1971 act required referral of proposed regulations to planning commission at least thirty-five, rather than thirty, days before hearing; P.A. 91-398 added provisions re statement on the record by combined planning and zoning commission of consistency of proposed change with the plan of development and requiring report of separate planning commission to contain findings on consistency of proposed regulation with plan of development and divided section into Subsecs.

Emphasizes legislative determination that cooperation between the two commissions should benefit a town. 148 C. 172. Cited. 150 C. 83, 140. Unanimous vote of zoning commission was effective to adopt zoning amendment over planning commission's opposition. 154 C. 202. Cited. 159 C. 587. Appeal dismissed for lack of required vote approval for adoption of zoning proposal. 162 C. 210, 211. Cited. 35 CS 246, 249.

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**Sec. 8-3b. Notice to regional planning agency of proposed zone or zone use change.** When the zoning commission of any municipality proposes to establish or change a zone or any regulation affecting the use of a zone any portion of which is within five hundred feet of the boundary of another municipality located within the area of operation of a regional planning agency, the zoning commission shall give written notice of its proposal to the regional planning agency or agencies of the region in which it and the other municipality are located not later than thirty-five days before the public hearing to be held in relation thereto. The regional planning agency shall study such proposal and shall report its findings and recommendations thereon to the zoning commission at or before the hearing, and such report shall be read aloud at the hearing. The report of any regional planning agency of any region that is contiguous to Long Island Sound shall include findings and recommendations on the environmental impact of the proposal on the ecosystem and habitat of Long Island Sound. If such report of the regional planning agency is not submitted at or before the hearing, it shall be presumed that such agency does not disapprove of the proposal. A regional planning agency receiving such a notice may transmit such notice to the Secretary of the Office of Policy and Management or his designee for comment. The planning agency may designate its executive committee to act for it under this section or may establish a subcommittee for the purpose. The report of said planning agency shall be purely advisory.

(1961, P.A. 546; 1967, P.A. 64, S. 1; 383, S. 1; 1969, P.A. 628, S. 5; 1971, P.A. 862, S. 3; P.A. 73-616, S. 51, 67; 73-679, S. 29, 43; P.A. 74-338, S. 42, 94; P.A. 75-537, S. 42, 55; P.A. 77-614, S. 19, 610; P.A. 84-76; P.A. 91-170, S. 3.)



History: 1967 acts required that zoning commission notify regional planning agency of proposal at least thirty, rather than twenty, days before hearing, substituted "does not disapprove" for "approves", and added provision for transmitting notice to Connecticut development commission; 1969 act substituted director of the office of state planning for Connecticut development commission; 1971 act required notification of regional planning agency at least thirty-five days before hearing; P.A. 73-616 returned notice required to thirty days; P.A. 73-679 substituted managing director, planning and budgeting division, department of finance and control or his designee for director of the office of state planning; P.A. 74-338 changed required notice to thirty-five days; P.A. 75-537 replaced managing director with commissioner of planning and energy policy; P.A. 77-614 replaced commissioner with secretary of the office of policy and management; P.A. 84-76 provided for the notification of the regional planning agencies in which both municipalities are located; P.A. 91-170 added provisions re report of region that is contiguous to Long Island Sound.

Report of capitol region planning agency disapproving planned special development district was advisory only and town council's acceptance of plan for district could not be revised by trial court on ground of agency's disapproval. 159 C. 212. Cited. 167 C. 579.

Cited. 2 CA 595, 598, 599. Cited. 30 CA 454, 455, 458 460.

Notice requirement is mandatory and not permissive. 35 CS 246, 247, 250, 253 256.

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**Sec. 8-3c. Special permits, exceptions and exemptions. Hearings. Filing requirements.** (a) If an application for a special permit or special exception involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, the applicant shall submit an application to the agency responsible for administration of the inland wetlands regulations no later than the day the application is filed for a special permit or special exception.

(b) The zoning commission or combined planning and zoning commission of any municipality shall hold a public hearing on an application or request for a special permit or special exception, as provided in section 8-2, and on an application for a special exemption under section 8-2g. The commission shall not render a decision on the application until the inland wetlands agency has submitted a report with its final decision to such commission. In making its decision the zoning commission shall give due consideration to the report of the inland wetlands agency. Notice of the time and place of such hearing shall be published in a newspaper having a substantial circulation in such municipality at least twice, at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before the date of such hearing. In addition to such notice, such zoning commission may, by regulation, provide for notice by mail to persons who are owners of land which is adjacent to the land which is the subject of the hearing. At such hearing any party may appear in person and may be represented by agent or by attorney. Such commission shall decide upon such application or request within the period of time permitted under section 8-7d. Whenever a commission grants or denies a special permit or special exception, it shall state upon its records the reason for its decision. Notice of the decision of the commission shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to the person who requested or applied for a special permit or special exception, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special permit or special exception may provide for the publication of such notice within ten days thereafter.

Such permit or exception shall become effective upon the filing of a copy thereof (1) in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located and (2) in the land records of the town in which the affected premises are located, in accordance with the provisions of section 8-3d. (1971, P.A. 862, S. 14; P.A. 77-450, S. 2; 77-509, S. 3; P.A. 87-215, S. 3, 7; 87-533, S. 8, 14; P.A. 88-338, S. 2, 5; P.A. 89-356, S. 12; P.A. 90-230, S. 12, 101.)

History: P.A. 77-450 deleted requirement that public hearing be held within sixty-five days and replaced requirement that decision be rendered within sixty-five days with requirement for rendering decision within time period under Sec. 8-7d; P.A. 77-509 changed effective date from time fixed by commission to time when filed in clerk's office and in land records; P.A. 87-215 authorized zoning commission to provide by regulation for additional notice by mail to adjacent landowners; P.A. 87-533 added Subsec. (a) regarding applications involving activity regulated pursuant to Secs. 22a-36 to 22a-45, inclusive, designated prior provisions as Subsec. (b) and added provision to require that the commission's decision be rendered after the inland wetlands agency has made its report and that the commission consider such report; P.A. 88-338 added applications for special exemption under section 8-2g to Subsec. (b); P.A. 89-356 amended Subsec. (b) to authorize the person who requested or applied for a special permit or special exception to provide for the publication of the notice of the decision of the commission when such notice is not timely published; P.A. 90-230 made a technical correction in Subsec. (b) by substituting reference to "permit" for reference to "variance".

Cited. 206 C. 554, 560, 564, 567, 574, 575. Cited. 218 C. 65, 68.

Cited. 5 CA 455, 456. Cited. 7 CA 684, 695. Cited. 18 CA 85, 88. Cited. 24 CA 163, 164. Cited. 29 CA 1, 7. Cited. 38 CA 171, 175. Cited. 41 CA 89, 92. Cited. 45 CA 89.

Cited. 42 CS 256, 260.

Subsec. (b):

Cited. 213 C. 604, 607. Cited. 218 C. 65, 66, 68, 70, 76 81. Cited. 220 C. 455, 458, 460, 464, 470. Cited. 224 C. 924. Cited. 227 C. 799 801.

Cited. 20 CA 705, 706. Cited. 29 CA 1, 7. Cited. Id., 469, 472, 473, 479 481. P.A. 87-533 cited. Id. Cited. 30 CA 395, 401; judgment reversed, see 230 C. 452 et seq. Trial court properly determined that failure of planning and zoning commission to comply with statutory notice and hearing requirements entitled individual plaintiffs to automatic approval of their application for special permit and site plan approval; notice of commission hearing was invalid and because failure to give proper notice was a jurisdictional defect, action of commission in denying plaintiffs' application was void. 52 CA 763.

Subsec. (c):

Cited. 218 C. 737, 740.

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**Sec. 8-3d. Variances, special permits, special exceptions and special exemptions to be recorded.** No variance, special permit or special exception granted pursuant to this chapter, chapter 126 or any special act, and no special exemption granted under section 8-2g, shall be effective until a copy thereof, certified by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, containing a description of the premises to which it relates and specifying the nature of such variance, special permit, special exception or special exemption, including the zoning bylaw, ordinance or regulation which is varied in its application or to which a special exception or special exemption is granted, and stating the name of the owner of record, is recorded in the land records of the

town in which such premises are located. The town clerk shall index the same in the grantor's index under the name of the then record owner and the record owner shall pay for such recording.

(P.A. 75-317; P.A. 77-509, S. 4; P.A. 88-338, S. 3, 5.)

History: P.A. 77-509 included reference to chapter 126; P.A. 88-338 added special exemptions granted under Sec. 8-2g.

Cited. 189 C. 573, 575.

Cited. 18 CA 85, 88. Cited. 30 CA 395, 401; judgment reversed, see 230 C. 452 et seq.

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**Sec. 8-3e. Regulation of community residences for mentally retarded persons. Petition for revocation of license.** (a) No zoning regulation shall treat any community residence which houses six or fewer mentally retarded persons and necessary staff persons and which is licensed under the provisions of section 17a-227 in a manner different from any single family residence.

(b) Any resident of a municipality in which such a community residence is located may, with the approval of the legislative body of such municipality, petition the Commissioner of Mental Retardation to revoke the license of such community residence on the grounds that such community residence is not in compliance with the provisions of any statute or regulation concerning the operation of such residences.

(P.A. 79-353; P.A. 84-341, S. 6, 8; P.A. 89-375, S. 4, 5.)

History: P.A. 83-341 added Subsec. (b) concerning petitions for revocation of license; P.A. 89-375 substituted "necessary" for "two" in referring to staff persons.

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**Sec. 8-3f. Establishment of community residences for mentally retarded persons. Zoning approval required.** No community residence established pursuant to section 8-3e shall be established within one thousand feet of any other such community residence without the approval of the body exercising zoning powers within the municipality in which such residence is proposed to be established.

(P.A. 84-517, S. 2, 3.)

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**Sec. 8-3g. Regulation of community residences for mentally ill adults and UCONN 2000 projects.**

(a) No zoning regulation adopted pursuant to this chapter or any special act shall prohibit any community residence in any area which is zoned to allow structures containing two or more dwelling units.

(b) No zoning regulation adopted pursuant to this chapter or any special act shall prohibit any project, as defined in subdivision (16) of section 10a-109c, in any area which is zoned to allow commercial structures.

(P.A. 84-341, S. 2, 8; P.A. 95-230, S. 40, 45; P.A. 97-293, S. 22, 26.)

History: P.A. 95-230 added Subsec. (b) re projects under UCONN 2000, effective June 7, 1995; P.A. 97-293 made a technical change in Subsec. (b), effective July 1, 1997.

See Sec. 19a-507a for definition of "community residence".

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**Sec. 8-3h. Notice to adjoining municipalities.** The zoning commission of any municipality shall notify the clerk of any adjoining municipality of the pendency of any application, petition, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such zoning commission is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. No hearing may be conducted on any application, petition, request or plan unless the adjoining municipality has received the notice required under this section. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, request or plan.

(P.A. 87-307, S. 1; P.A. 89-175, S. 3, 7.)

History: P.A. 89-175 changed mailing requirement for notice to adjoining municipality from registered mail to certified mail, return receipt requested.

Cited. 220 C. 455, 456, 458, 465. P.A. 89-175, Sec. 3 cited. Id. Notice to be given an adjoining municipality only when proposal on its face refers to a specific project rather than general amendments to zoning regulations not confined to a specific site or project. Id., 556, 557, 560, 568.

Cited. 30 CA 454, 456, 458, 459.

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**Sec. 8-3i. Notice to water company re projects within aquifer protection area or watershed of water company.** (a) As used in this section "water company" means a water company as defined in section 25-32a and "petition" includes a petition or proposal to change the regulations, boundaries or classifications of zoning districts.

(b) When an application, petition, request or plan is filed with the zoning commission, planning and zoning commission or zoning board of appeals of any municipality concerning any project on any site which is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company, the applicant or the person making the filing shall provide written notice of the application, petition, request or plan to the water company, provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application, petition, request or plan is made and with the zoning commission, planning and zoning commission or zoning board of appeals of such municipality or the aquifer protection area has been delineated in accordance with section 22a-354c, as the case may be. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of the application. Such water company may, through a representative, appear and be heard at any hearing on any such application, petition, request or plan.

(c) Notwithstanding the provisions of subsection (b) of this section, when an agent of the zoning commission, planning and zoning commission or zoning board of appeals is authorized to approve an application, petition, request or plan concerning any site which is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company without the approval of the

zoning commission, planning and zoning commission or zoning board of appeals, and such agent determines that the proposed activity will not adversely affect the public water supply, the applicant or person making the filing shall not be required to notify the water company.

(P.A. 89-301, S. 2; P.A. 91-300, S. 3; P.A. 98-115.)

History: P.A. 91-300 revised the statutory definition of water company by changing the statutory definition reference from Sec. 16-1 to Sec. 25-32a; P.A. 98-115 added Subsec. (a) defining "water company" and "petition", designated existing provisions Subsec. (b) and amended Subsec. (b) to require notice of projects in aquifer protection areas and added Subsec. (c) re approvals by agents of land use agencies without notice under this section.

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**Sec. 8-3j. Regulation of family day care homes.** No zoning regulation shall treat any family day care home registered pursuant to section 17b-733 in a manner different from single or multifamily dwellings. (P.A. 90-286, S. 4, 9.)

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**Sec. 8-4. Zoning commission may be designated as planning and zoning commission.** Section 8-4 is repealed.

(1949 Rev., S. 840; 1959, P.A. 679, S. 4.)

See Sec. 8-4a.

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**Sec. 8-4a. Zoning or planning commission may be designated as planning and zoning commission.** Any town, city or borough, unless otherwise provided by special act, may by ordinance or by vote of its legislative body designate its zoning commission or its planning commission as the planning and zoning commission for such municipality, and such commission shall thereupon have all the powers and duties of both a planning commission and a zoning commission and shall supersede any previous planning commission or zoning commission, as the case may be. Such vote shall establish the number of members to comprise such planning and zoning commission, which number of members shall be five, six, seven, eight, nine or ten, not counting nonvoting members. In the establishment of a five-member planning and zoning commission, the provisions of section 8-19 shall apply. In the establishment of a planning and zoning commission with six or more members, the provisions of section 8-19 shall apply except that the terms of office shall be so arranged that not more than three of such terms on a six-member commission, four of such terms on a seven or an eight-member commission, or five of such terms on a nine or ten-member commission shall expire in any one year. Any public hearing conducted by a planning and zoning commission with six or more members shall be held by the commission or a committee thereof appointed for that purpose constituting a majority of the members of the commission. Any combined planning and zoning commission established under the general statutes prior to October 1, 1959, may continue to exist. Upon the establishment of a combined planning and zoning commission, all regulations adopted by the planning commission or the zoning commission which were in effect prior to the establishment of such combined commission shall continue in full force and effect until modified, repealed or superseded in accordance with the provisions of this chapter and chapter 126. A vacancy on

such combined planning and zoning commission shall be filled in a manner prescribed by the legislative body of such municipality.

(1959, P.A. 614, S. 6; 679, S. 3; 1971, P.A. 362, S. 1; 763, S. 2; P.A. 75-21, S. 1, 3; P.A. 77-509, S. 10.)

History: 1971 acts added provision continuing regulations of zoning or planning commission in force until modified, repealed or superseded by newly combined commission and extended applicability of section to cities and boroughs; P.A. 75-21 changed maximum numbers of terms to expire in one year from two to three on six-member commission, from three to four on seven or eight-member commission and from four to five on a nine or ten-member commission; P.A. 77-509 added provision concerning filling of vacancies.

See Sec. 8-1b re alternate members of zoning commission or combined planning and zoning commission. Annotations to former statute:

Cited. 113 C. 776. No action can be taken by town meeting unless referred to or disapproved by commission. 143 C. 152. Relationship between planning and zoning. 145 C. 28. Cited. 146 C. 570.

Annotations to present section:

Cited. 154 C. 473; 161 C. 430; 170 C. 62. Cited. 186 C. 106, 110. Vote of a salaried municipal officer although invalid under this statute and Sec. 8-19 did not invalidate commission's entire action in approving a zone reclassification where total valid votes were sufficient. 196 C. 192, 193, 195, 196, 199, 202.

Cited. 2 CA 213, 215. Cited. 31 CA 643, 648.

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**Sec. 8-4b. Change from combined commission to separate commissions.** Any town, city or borough which has designated its zoning commission or its planning commission as the planning and zoning commission of such municipality under the provisions of section 8-4a may, by ordinance or by vote of its legislative body, reverse such designation and do anything necessary to conform to the provisions of this chapter or chapter 126; provided no such reversal, unless otherwise stated, shall be construed to affect the continuity of planning or zoning in such town.

(February, 1965, P.A. 566; 1971, P.A. 763, S. 3.)

History: 1971 act included cities and boroughs under provisions of section.

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**Sec. 8-5. Zoning board of appeals. Alternate members.** (a) In each municipality having a zoning commission there shall be a zoning board of appeals consisting of five regular members and three alternate members, unless otherwise provided by special act. Such alternate members, also referred to as "the panel of alternates", shall, when seated as herein provided, have all the powers and duties set forth in the general statutes relating to zoning boards of appeals and their members. The regular members and alternate members of such zoning board of appeals shall be electors and shall not be members of the zoning commission, any provision of any special act to the contrary notwithstanding. Such board and such panel of alternates shall, unless otherwise provided by special act, be elected or appointed in such manner and for such terms as is determined for each by ordinance adopted by the municipality. Any vacancy in such board, including any vacancy in the panel of alternates, unless otherwise provided by ordinance or special act, shall be filled for the unexpired portion of the term, by the board of selectmen of towns or the chief executive officer of cities and boroughs. Such board by vote of its regular members

only shall elect a chairman from among its members, unless otherwise provided by special act, and all meetings of such board shall be held at the call of the chairman and at such other times as the board determines and shall be open to the public. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings showing the vote of each member and each alternate member when seated upon each question or, if absent or failing to vote, indicating such fact; and shall also keep records of its examinations and other official actions. Each rule or regulation and each amendment or repeal thereof and each order, requirement or decision of the board shall immediately be filed in the office of the board and shall be a public record.

(b) The zoning board of appeals of any town shall have jurisdiction over that part of the town outside of any city or borough contained therein except that the legislative body of any city or borough may, by ordinance, designate the zoning board of appeals of the town in which such city or borough is situated as the zoning board of appeals of such city or borough.

(1949 Rev., S. 841; 1951, S. 158b; 1953, S. 376d; 1959, P.A. 146, S. 1; 1961, P.A. 271; 1963, P.A. 137; 1971, P.A. 763, S. 4; P.A. 75-629, S. 2; P.A. 89-175, S. 1, 7.)

History: 1959 act required alternate members; 1961 act added panel of alternates in provision for method of selection and determination of terms; 1963 act added "any provision of any special act to the contrary notwithstanding" to the provision governing membership of zoning board of appeals; 1971 act made no changes; P.A. 75-629 added Subsec. (b) concerning jurisdiction of zoning board of appeals; P.A. 89-175 amended Subsec. (a) to eliminate provisions re appointment of board members and alternates in cities and boroughs and to provide that board members and alternates may be elected or appointed in any municipality.

See Sec. 9-1 for applicable definitions.

See Sec. 9-209 re certification of terms of office and number of members of planning and zoning boards or commissions.

Cited. 123 C. 264. Board of appeals acts in a quasi-judicial capacity as distinguished from zoning commission. 145 C. 592. Cited. 148 C. 33. Cited. 165 C. 185. Cited. 219 C. 352, 361.

Cited. 33 CA 281, 286.

Compared with number 305 of special acts of 1931. 10 CS 194.

Subsec. (a):

Cited. 33 CA 281, 284.

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**Sec. 8-5a. Designation of alternate members to act.** If a regular member of a zoning board of appeals is absent, he may designate an alternate from the panel of alternates to act in his place. If he fails to make such designation or if he is disqualified, the chairman of the board shall designate an alternate from such panel, choosing alternates in rotation so that they shall act as nearly equal a number of times as possible. If any alternate is not available in accordance with such rotation, such fact shall be recorded in the minutes of the meeting.

(1959, P.A. 146, S. 2; 1971, P.A. 763, S. 5.)

History: 1971 act made no changes.

Fact that minutes failed to show how or by whom alternates who participated in hearing were designated not invalidate board's action. 150 C. 539. Cited. 219 C. 352, 361.

Cited. 33 CA 281, 284.

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**Sec. 8-5b. Ordinance may provide for appointment of alternate members.** Any town, city or borough, in addition to such powers as it has under the provisions of the general statutes or any special act, shall have the power to provide by ordinance for the appointment of three alternate members to its zoning board of appeals as is set forth in section 8-5.

(1961, P.A. 253 )

Cited. 219 C. 352, 361.

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**Sec. 8-6. Powers and duties of board of appeals.** (a) The zoning board of appeals shall have the following powers and duties: (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions and special exemptions under section 8-2g upon which it is required to pass by the specific terms of the zoning bylaw, ordinance or regulation; and (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. No such board shall be required to hear any application for the same variance or substantially the same variance for a period of six months after a decision by the board or by a court on an earlier such application.

(b) Any variance granted by a zoning board of appeals shall run with the land and shall not be personal in nature to the person who applied for and received the variance. A variance shall not be extinguished solely because of the transfer of title to the property or the invalidity of any condition attached to the variance that would affect the transfer of the property from the person who initially applied for and received the variance.

(1949 Rev., S. 842; P.A. 77-509, S. 5; P.A. 88-338, S. 4, 5; P.A. 93-385, S. 1.)

History: P.A. 77-509 added provisions concerning variances; P.A. 88-338 added reference to special exemptions under Sec. 8-2g; P.A. 93-385 designated existing provisions as Subsec. (a) and added Subsec. (b) providing that zoning variances shall run with the land.

See 123 C. 480. Action in executive session by four members of board not invalid because full membership did not participate. 125 C. 720. Board of appeals not unreasonable in denying variance for parking lot in residential zone. 126 C. 228. Provision re variance in regulation was in harmony with this section. 129 C. 288. "Hardship" construed. 111 C. 616; 114 C. 15; 120 C. 454; 124 C. 525; 125 C. 715; 126 C. 228; 129 C. 280; Id., 285; 130 C. 164; 132 C. 542. Injunctive relief on ground of unconstitutionality of action of zoning authorities cannot be sought until party has been granted or denied variance by zoning board of appeals. 142 C. 415. Board has power to grant variance under this section when its own regulation was limited. 143 C. 132. Zoning board of appeals shall not grant variance unless



it can reasonably find that strict application would entail exceptional difficulty or undue hardship on an individual property owner. 143 C. 542. Similar provision in Bridgeport zoning regulations construed. 144 C. 641. Difference between variance and exception. Accessory use defined. 146 C. 70. Financial loss or hardship is not sufficient reason for granting variance. 146 C. 547. Conditions permitting an exception must be found in zoning regulations themselves. 146 C. 665. Variance denied since hardship was of plaintiffs' own making. 146 C. 737. In order to warrant a variance, hardship must be shown to differ in kind from hardship imposed on properties in general by regulations. 147 C. 358. Cited. 148 C. 33. Board can grant variance for reasons stated in this section; mere financial gain to applicant is not sufficient. 148 C. 443. Zoning board of appeals should not be permitted to revoke former action unless there has been a change in conditions or new considerations materially affecting merits of subject matter have intervened. That applies even though former action was taken without prejudice. 149 C. 698. Where plaintiff purchased property under conditions and restrictions now complained of, ground of "hardship" without support in evidence. Also motive for seeking variance was greater financial return, and any claimed unsuitability of land for residence purposes did not attach any more particularly to plaintiff's land than to zoning district in general. 149 C. 698. Mere financial loss does not constitute hardship warranting granting of variance. But if loss is so great as to amount to confiscation of applicant's property, variance might be justified. 150 C. 391. Hardship warrants granting of variance only if it is different in kind from hardship imposed by regulations on property in general. It must be peculiarly oppressive to applicant's property. *Id.* Zoning board of appeals acting under this section must conduct public hearing on every application submitted to it and give timely and adequate notice in accordance with section 8-7. 150 C. 532. Aggrieved party cannot bypass board by bringing action in superior court seeking review of zoning enforcement officer's action. 151 C. 27. Board cannot reverse its decision unless aggrieved party can show a change of conditions or circumstances. 151 C. 34. For granting of variance, hardship imposed must differ in kind from hardship imposed on properties generally by the regulations. 151 C. 49. If hardship affects all property in general area, the matter can only be acted on legislatively, not administratively. *Id.* Special exception not allowed where requirements of regulations not met. 151 C. 144. Variance allowed where owner built on lot with one hundred foot frontage, even where area restricted to one hundred twenty foot frontage and owner had prior opportunity to buy lot at its original one hundred twenty foot frontage. 151 C. 165. As variance would not materially impair effectiveness of zoning regulations as a whole, court upheld granting of said variance. 151 C. 166. When claimed hardship arises because of actions of applicant, board is without power to grant variance. 151 C. 681. Mere statement that application of zoning restriction to named premises constitutes a hardship not sufficient reason for variance. 153 C. 314, 316. Failure to give posted notice as required by Stratford zoning regulations made action by town zoning board granting zoning changes illegal. 154 C. 420. One who has contracted to purchase property has standing to apply for a special exception or variance governing its use. 154 C. 426. Refusal of zoning board to grant variance was not abuse of its discretion where applicant had bought undersized lot in district zoned to require three acre lots for building. *Id.*, 380. Board had function of deciding whether plaintiff's process of assembling small arms ammunition was manufacture of explosives prohibited by zoning regulation in his area and was not bound by definition of explosives in section 29-83. *Id.*, 558. That property previously equipped and leased as restaurant could not now be leased again as restaurant unless variance was granted to permit restoration of its lapsed liquor permit held not such a hardship as justified board of appeals granting a variance. 156 C. 426. Cited. 156 C. 588, 591. Appeal to court of common pleas without prior proceeding under this section upheld where relief sought was equitable in nature for injunction against town officials. 157 C. 48. Cited. 155 C. 175, 180. Cited. 162 C. 44. Considerations of board in granting variances. 163 C. 179. Cited. 163 C. 237, 238, 453. Notice which incorrectly referred to an appeal hearing as a hearing on a

variance request held sufficient. 164 C. 325. Cited. 165 C. 185. Section 8-6 does not allow a board of appeals when granting a variance to make a new ordinance for a particular property; the statute only allows the board to vary the application of the existing ordinance in enumerated instances. 168 C. 194. Cited. 173 C. 420, 423. Statutory standard of "exceptional difficulty or unusual hardship" interpreted. 174 C. 323, 326, 327. Cited. 178 C. 364, 368; 179 C. 250, 253. Zoning board of appeals lacked authority to grant variance for trailer park since city's zoning regulations prohibited the enlargement of a nonconforming use. 180 C. 193, 198. Cited. 186 C. 32, 38. Section does not preclude review of actions of a commission by zoning board of appeals, discusses relationship with Secs. 8-9 and 8-10. 186 C. 106, 108, 113, 114, 117, 118. Cited. 213 C. 604, 610. Cited. 217 C. 588, 607. Cited. 219 C. 352, 359, 361. Cited. 221 C. 374, 377, 380, 382, 383. Cited. 225 C. 432, 437. Cited. Id., 691, 694, 697. Cited. 226 C. 80, 87. Cited. 233 C. 198, 207. Cited. 235 C. 850, 851, 854, 856, 858, 862, 864. Cited. 241 C. 180. Cited. 4 CA 271, 273. Action pending under this section cannot be used under prior pending action rule to bar action subsequently brought under Sec. 8-12. 9 CA 534, 537. Cited. 15 CA 729, 737. Cited. 18 CA 195, 204; Id., 312, 313. Cited. 22 CA 255, 257. Cited. 24 CA 49, 52, 54. Cited. 25 CA 631, 634, 635. Cited. 27 CA 297, 298, 303, 306. Cited. 29 CA 402, 405. Cited. 31 CA 380, 383. Cited. 42 CA 272; judgment reversed, see 241 C. 180 et seq. Cited. 43 CA 545.

Board is without power to authorize an exception or variance without some basis of fact. 18 CS 48. Compared with number 305 of the special acts of 1931. 10 CS 194. Possible inconvenience to public and economic disadvantage to owner held not sufficient justification for granting of variance on ground of practical difficulty or unnecessary hardship. 21 CS 102. Where board passed on issue which was not presented to it in any manner cognizable under the act or the regulations, it acted gratuitously and the application was not within its jurisdiction and should have been denied. 25 CS 279. Rule that board cannot reverse a former decision unless there has been a change in conditions did not apply where former decision was invalid because of improper notice. 26 CS 255. Circumstances under which board's decisions should be overruled discussed. Id., 256. Zoning board of appeals acted in arbitrary and illegal manner in granting variance to defendant where there was no evidence the limitation as to the amount of outdoor storage area was so unbearable a reduction as to be confiscatory or arbitrary. 28 CS 278. Cited. 30 CS 157. Cited. 32 CS 223. Cited. 32 CS 625. Zoning board of appeals did not act arbitrarily in denying a variance to use a portion of a residence as a real estate office since a real estate broker is not a "professional person" within purview of zoning regulations. 36 CS 217, 220. Cited. 38 CS 651, 654. Cited. 41 CS 218, 221, 222.

Subsec. (a):  
Cited. 42 CA 272; judgment reversed, see 241 C. 180 et seq.

Subsec. (a)(1):  
Legislative intent that issue of what constitutes nonconforming use should be handled in the first instance by local administrative officials. 180 C. 575, 578. Cited. 181 C. 556, 558. Cited. 225 C. 575, 595. Cited. 234 C. 498, 503.  
Cited. 12 CA 90, 94. Cited. 17 CA 17, 40; judgment reversed, see 212 C. 570 et seq. Cited. 20 CA 302, 304, 307. Cited. 34 CA 552, 555. Cited. 43 CA 443.

Subsec. (a)(3):  
Power to vary regulations must be sparingly exercised. Financial detriment to a single owner not sufficient reason. 139 C. 116. Cited. 152 C. 661; 155 C. 42; 165 C. 389, 393. Circumstances in which the zoning board of appeals may grant a variance are in substance the same as those specified in section 12-6.3 of the zoning regulations of New Haven. 165 C. 749, 752. Cited. 179 C. 650, 655, 657, 660; 181 C. 556, 558. Cited. 186 C. 32, 38. Cited. 205 C. 703, 709, 711. Cited. 206 C. 362, 368. Cited. 218 C. 438, 445. Cited. 228 C. 785, 790. Cited. 234 C. 498, 506. Cited. 235 C. 850, 856.

Cited. 4 CA 205, 208. Cited. Id., 500-502. Cited. 15 CA 387, 389. Cited. 18 CA 195, 204. Cited. 20 CA 302, 304-307. Cited. 21 CA 594, 597. Cited. 23 CA 441, 442. Cited. 24 CA 49, 52. Cited. 25 CA 375, 381; Id., 631, 634, 636. Cited. 26 CA 187, 190. Cited. 27 CA 297, 298, 303. Cited. 31 CA 270, 273. Cited. 34 CA 552, 555. Cited. 43 CA 545. Voluntary assumption of hardship does not constitute grounds for a variance. 50 CA 308.

Where zoning board granted plaintiffs variance from which a successful appeal was taken, fact that plaintiffs had begun construction did not constitute a hardship under this section since such construction was begun before expiration of appeal period. 26 CS 255, 256. No hardship existed by reason of the size, shape and topography of plaintiffs' lot where all properties in the area were similar in size, shape and grade and regulations affected all similar properties in the same manner. Id. Financial disappointment insufficient to support granting of variance absent showing strict application of zoning regulations would destroy economic utility of property. 29 CS 4, 7. Property owners purchasing, with knowledge, express or implied, of zoning regulations, cannot be deemed to prevent valid case of exceptional difficulty or unusual hardship since they were aware, in law or in fact, of zoning restrictions prior to taking title to premises. 29 CS 4, 6.

Subsec. (b):

Cited. 235 C. 850, 856, 858, 861.

Cited. 45 CA 702.

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**Sec. 8-6a. Appeal to be heard before variance when both joined.** Whenever an application to a zoning board of appeals for the grant of a variance is joined with an appeal from any order, requirement or decision made by the official charged with the enforcement of this chapter, or any bylaw, ordinance or regulation adopted under the provisions of this chapter, the board shall first decide the issues presented by such appeal.

(P.A. 75-86, S. 1.)

Cited. 219 C. 352, 361. Cited. 225 C. 691, 695, 696. Cited. 226 C. 80, 87.

Cited. 20 CA 302, 305, 306, 309. Cited. 34 CA 552, 553, 556.

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**Sec. 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements.**

The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. An appeal shall not stay any such order, requirement or decision which prohibits further construction or expansion of a use in violation of such zoning regulations except to such

extent that the board grants a stay thereof. An appeal from any other order, requirement or decision shall stay all proceedings in the action appealed from unless the zoning commission or the officer from whom the appeal has been taken certifies to the zoning board of appeals after the notice of appeal has been filed

if by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed, except by a restraining order which may be granted by a court of record on application, on notice to the zoning commission or the officer from whom the appeal has been taken and on due cause shown. Such board shall, within the period of time permitted under section 8-7d, hear such appeal and give due notice thereof to the parties. Notice of the time and place of such hearing shall be published in a newspaper having a substantial circulation in such municipality at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before such hearing. In addition to such notice, such board may, by regulation, provide for notice by mail to persons who are owners of land which is adjacent to the land which is the subject of the hearing. At such hearing any party may appear in person and may be represented by agent or by attorney. Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals grants or denies any special exception or variance in the zoning regulations applicable to any property or sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision and the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based. Notice of the decision of the board shall be published in a newspaper having a substantial circulation in the

municipality and addressed by certified mail to any person who appeals to the board, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special exception or variance or took such appeal may provide for the publication of such notice within ten days thereafter. Such exception or variance shall become effective upon the filing of a copy thereof (1) in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located and (2) in the land records of the town in which the affected premises are located, in accordance with the provisions of section 8-3d.

(1949 Rev., S. 843; 1951, 1953, S. 378d; 1959, P.A. 458; 577, S. 5; 614, S. 4; 1963, P.A. 55, S. 1; February, 1965, P.A. 622, S. 2; 1967, P.A. 884, S. 1; 1971, P.A. 862, S. 4; P.A. 75-86, S. 2; P.A. 77-450, S. 3; 77-509, S. 6; P.A. 84-122; P.A. 87-215, S. 4, 7; P.A. 89-356, S. 13.)

History: 1959 acts changed "appellant" to "applicant" in first sentence, provided for filing of exception, variance or reversal in case of a district, added requirement of newspaper publication of notice of hearing and added requirement appeal be decided within sixty days; 1963 act added requirement board record reasons for denial of exception or variance and for sustaining of order or decision; 1965 act required notice of board's decision on appeal to be mailed to appellant and to be published in a newspaper, eliminated requirement for publishing notice of the filing of the variance, exception or reversal and deleted statement that appeals from decisions of board may be made in the manner set forth in Sec. 8-8 within fifteen days of their effective date; 1967 act stated in more detail the notification of decision

required to be given the appellant and changed deadline for notification from within three days of decision to within ten days of decision; 1971 act required that appeal be heard within sixty-five days of notice rather than within "a reasonable time", required that decision be rendered within sixty-five, rather

than sixty, days of hearing and required publication of decision and notification of appellant within fifteen rather than ten days; P.A. 75-86 required recording of regulation varied or to which exception made and basis for reaching decision; P.A. 77-450 deleted provision requiring that decision be reached within sixty-five days of hearing and replaced sixty-five day limit between notice and hearing with reference to time period under Sec. 8-7d; P.A. 77-509 added provision concerning stay of order on appeal where prohibition of construction, expansion, etc. involved and provided that decisions become effective not at time fixed by board but by filing in clerk's office and in land records; P.A. 84-122 required that appeals be taken within thirty days if no set period for taking appeals is adopted by the board; P.A. 87-215 authorized board to provide by regulation for additional notice by mail to adjacent landowners; P.A. 89-356 added provision authorizing the person who requested or applied for a special exception or variance or took an appeal to provide for the publication of the notice of the decision of the board when such notice is not published in a timely manner.

See notes to section 8-6.

Cited. 140 C. 527; 142 C. 88; *id.*, 92; 148 C. 33, 603. Since there was no applicable limitation of time for taking appeal, and since there was failure to show prejudice by any delay in taking appeal and thus doctrine of laches could not be invoked, it could not be said that appeal was barred by lapse of time. 150 C. 113. Cited. 150 C. 413. Provisions requiring hearing to be held by zoning board of appeals on "any appeal" are not limited to appeals in technical sense. They apply to every application invoking powers conferred on board by section 8-6. 150 C. 532. Recitation that applicant sought permission to change nonconforming use of his premises as a mink ranch to a "lesser" nonconforming use was insufficient notice to inform those who might be affected by change. *Id.* Prior to 1965 amendment: Time for taking appeal from zoning board controlled by section 8-7 rather than section 8-8. 151 C. 646. Cited. 151 C. 694; 153 C. 315; *id.*, 623; 154 C. 32, 34; 155 C. 178, 180. Although condition requiring petitioner to build part of property for street widening was illegal and of no effect, remainder of board's decision granting exception for construction of gasoline station was separable and therefore valid. 155 C. 350. Provisions not applicable to any municipality which has not adopted general enabling act as provided in section 8-1; hence notice of hearing in conformance with Hartford zoning ordinance was proper notice of hearings before zoning board of appeals of city of Hartford. *Id.*, 360. Section not applicable to hearing before municipal zoning board of appeal prior to adoption of chapter by municipality. *Id.*, 422. Provision that board "shall decide" appeals within sixty days after hearing relates to procedure and is directory, not mandatory. *Id.*, 550. Zoning regulations required board to find "that the existing public streets" are adequate to handle additional traffic where an exception is granted and board could not grant exception conditional on determination of adequacy by town traffic commission. 157 C. 420. Board of appeals in hearing plaintiff's appeal from action of zoning commission was administrative body acting in a quasi-judicial capacity; plaintiff was given a fair hearing, witnesses not required to testify so that she might cross-examine them. 158 C. 158. Notice of hearing sufficient if it sufficiently apprises those interested of action proposed to enable them to prepare for hearing. 158 C. 202. Compliance with publication requirement by the board is presumed. 158 C. 331. Cited. 158 C. 336. Cited. 162 C. 74. Cited. 163 C. 379. Cited. 165 C. 185. Court, upon concluding that action taken by administrative agency was illegal, arbitrary or in abuse of its discretion, should go no further than to sustain appeal. Direction of what action should be taken would be usurpation of administrative function. 165 C. 749, 754. Cited. 173 C. 420, 425. Cited. 174 C. 351, 353; *Id.*, 488, 491. Cited. 195 C. 276, 280, 281, 283. Cited. 211 C. 78, 81, 83, 84. Cited. 212 C. 628, 631. Cited. 213 C. 604, 607. Cited. 218 C. 65, 79, 80. Cited. 219 C. 352, 357, 359, 361. Without subject matter jurisdiction board's action was a nullity. Judgment of appellate court in *Noepke v. Zoning Board of Appeals*, 25 CA 611 reversed and case remanded to appellate court for its plenary consideration of timeliness of appeal. 223 C. 171, 174, 176, 178. Cited. 225 C. 432, 433, 439,

440, 443, 444; Id., 575, 595. Cited. 226 C. 80, 87, 89; Id., 913. Judgment of appellate court in *Koepke v. Zoning Board of Appeals*, 30 CA 395, reversed. 230 C. 452, 454 456, 458. Exhaustion of administrative remedies doctrine not applicable to plaintiffs; judgment of appellate court in *Loulis v Parrott*, 42 CA 272 et seq. reversed. 241 C. 180.

Cited. 2 CA 384, 386, 387. Cited. Id., 506, 509. Cited 4 CA 205, 206. Cited. Id., 633, 639. Statutory and classical aggrievement discussed. 7 CA 632, 635, 637, 638. Cited. Id., 684, 687 689. Cited. 16 CA 604, 606; judgment reversed, see 212 C. 628 et seq. Cited. 17 CA 17, 40; judgment reversed, see 212 C. 570 et seq. Cited. 20 CA 561, 566. Cited. 23 CA 232, 235 237. Cited. 25 CA 611, 615; judgment reversed, see 223 C. 171 et seq. Cited. 26 CA 187, 189. Cited. 28 CA 256, 258, 259; judgment affirmed in part and modified in part, see 226 C. 80 et seq. Cited. 30 CA 395, 397, 398; judgment reversed, see 230 C. 452 et seq. Cited. Id., 797, 799, 800. Valid vote can occur only when agency members are present and convened together at a public meeting. 33 CA 281, 285, 286. Cited. 34 CA 552 555. Cited. 40 CA 692, 694. Cited. 41 CA 89, 110, 112. Cited. 42 CA 272; judgment reversed, see 241 C. 180 et seq. Cited. 43 CA 512. Cited. Id., 563.

Board of zoning appeals members who will make decision must be present at public hearing. 19 CS 307. Cited. 23 CS 7, 10. Appeal stays all proceedings in action appealed from including criminal proceedings provided for in section 8-12. 23 CS 125. Cited. 25 CS 276. History discussed. 26 CS 88, 89. Plaintiffs' claim that logic dictates that legislature did not intend that there should be an inconsistent procedure relative to appeals from decisions of zoning boards of appeal and zoning boards and that therefore the running of the appeal period in the case of a zoning regulation should be contingent on the statutory publication is without merit. Id., 90. Cited. 26 CS 169. Rule that board cannot reverse a former decision unless there has been a change in condition did not apply where former decision was invalid because of improper notice. 26 CS 255. Circumstances under which board's decisions should be overruled discussed.

CS 256. Where zoning was controlled by special act with different requirements as to notice of hearing, special act prevails. 26 CS 262. Equitable relief outside the framework of appeal procedure set up by statute might be granted in the presence of allegations of fraudulent connivance or collusion on the part of local zoning board of appeals. 26 CS 334, 335. Plaintiffs have been granted equitable relief when the zoning authority lacked the jurisdiction to take the action which the plaintiff was challenging. Id. Equitable relief by way of an injunction will not be granted if the court finds that the legal remedy afforded by the statute has not been exhausted. Id. Cited. 32 CS 223. Cited. 32 CS 625. Cited. 35 CS 246, 247. Cited. 38 CS 492, 494. Cited. 39 CS 426; Id., 523 527. Cited. 41 CS 398, 399. Cited. 43 CS 373, 374.

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**Sec. 8-7a. Evidence at hearings to be taken by stenographer or recorded.** The zoning commission, planning commission, planning and zoning commission and zoning board of appeals shall call in a competent stenographer to take the evidence, or shall cause the evidence to be recorded by a sound-recording device, in each hearing before such commission or board in which the right of appeal lies to the Superior Court.

(1959, P.A. 460, S. 1; P.A. 76-436, S. 290, 681; P.A. 90-286, S. 6, 9.)

History: P.A. 76-436 substituted superior court for court of common pleas, effective July 1, 1978; P.A. 90-286 made requirements of section applicable to planning commissions and planning and zoning commissions.

Cited. 148 C. 600. History discussed; reversal of decision at 23 CS 6; failure of board of appeals to

comply with mandate of this section renders action voidable at option of an aggrieved person. 150 C. 411, but see provisions of section 8-8 adopted in 1963 concerning taking of evidence. Cited. 153 C. 713; 154 C. 393, 396; 155 C. 268. Cited. 162 C. 44. Cited. 219 C. 352, 361; Id., 511, 515. Cited. 226 C. 80, 87

Cited. 6 CA 110, 112. Cited. 43 CA 563.

Where, due to mechanical failure of recording machine, no transcript is available, court may permit introduction of additional evidence to determine what considerations were presumptively in minds of board members. 23 CS 6. Reversed, 150 C. 411, supra.

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**Sec. 8-7b. Notice to contiguous municipalities of variance applications.** Whenever a zoning board of appeals has before it for consideration an application for a variance in the use of property any portion of which lies within five hundred feet of a contiguous municipality within the state, such board shall, at least one week prior to the hearing thereon, notify the clerk of such municipality, in writing, of the fact of such application and of the date, time and place fixed by it for such hearing.

(February, 1965, P.A. 54; P.A. 83-247.)

History: P.A. 83-247 provided that notification need be made only to municipalities within the state and shall include the time and place of the hearing.

Cited. 219 C. 352, 361. Cited. 226 C. 80, 87.

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**z. 8-7c. Disclosure of beneficiaries of real property held in trust.** Any person who makes an application to a planning commission, zoning commission or zoning board of appeals pertaining to real property, the record title to which is held by a trustee of an undisclosed trust, shall file with said application a sworn statement disclosing the name of the equitable owner of such real property or the beneficiary of the trust.

(1971, P.A. 782.)

Cited. 219 C. 352, 361.

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**Sec. 8-7d. Hearings and decisions. Time limits. Day of receipt.** (a) Except as provided in subsection (b) of this section, in all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter and a hearing is required on such petition, application, request or appeal, such hearing shall commence within sixty- five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences. All decisions on such matters shall be rendered within sixty-five days after completion of such hearing. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of any such period shall not be for longer than the original period as specified in this subsection, or may withdraw such petition, application, request or appeal.

Whenever the approval of a site plan is the only requirement to be met or remaining to be met under the zoning regulations for any building, use or structure, a decision on an application for approval of such

site plan shall be rendered within sixty-five days after receipt of such site plan. The applicant may consent to one or more extensions of such period, provided the total period of any such extension or extensions shall not exceed two further sixty-five-day periods, or may withdraw such plan.

, For purposes of subsection (a) or (b) of this section, the day of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission or board, immediately following the day of submission to such board or commission or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission or board does not maintain an office with regular office hours, the office of the clerk of the municipality shall act as the agent of such commission or board for the receipt of any petition, application, request or appeal.

(d) The provisions of subsection (a) of this section shall not apply to any action initiated by any zoning or planning and zoning commission regarding adoption or change of any zoning regulation or boundary.

(e) Notwithstanding the provisions of this section, if an application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by a zoning commission or planning and zoning commission established pursuant to this section would elapse prior to the thirty-fifth day after a decision by the inland wetlands agency, the time period for a decision shall be extended to thirty-five days after the decision of such agency. The provisions of this subsection shall not be construed to apply to any extension consented to by an applicant or petitioner.

(1971, P.A. 862, S. 12; P.A. 77-450, S. 4; P.A. 78-104, S. 1; P.A. 82-81, S. 1; P.A. 87-533, S. 10, 14; P.A. 93-385, S. 2; P.A. 99-21, S. 1.)

History: P.A. 77-450 reworded previous provisions and designated them as Subsec. (c) and inserted new Subsecs. (a) and (b) before and new Subsec. (d) after; P.A. 78-104 amended Subsec. (a) to allow more than one extension and changed maximum extension time from double the original period to a time equaling the original period, made Subsec. (b) applicable to cases where site plan approval is only requirement to be met or remaining to be met and clarified Subsec. (c) by replacing references to "official receipt" with references to "submission"; P.A. 82-81 provided that town clerk would act as agent for receipt of documents for any board or commission not having regular office hours; P.A. 87-533 added Subsec. (e) regarding applications involving activity regulated pursuant to Secs. 22a-36 to 22a-45, inclusive; P.A. 93-385 amended Subsec. (b) by applying provisions to all buildings, uses or structures instead of limiting applications to proposals; P.A. 99-21 amended Subsec. (a) to extend the time for completion of a hearing from thirty to thirty-five days after commencement.

Cited. 192 C. 353, 361. Cited. 194 C. 187, 192, 196, 197. Cited. 206 C. 554, 560, 562, 564, 567, 574.

Cited. 211 C. 331, 333, 337. Cited. 219 C. 352, 361. Cited. 222 C. 269, 275. Cited. 224 C. 44, 49. Cited. 225 C. 432, 433, 438, 440, 442, 444. Cited. Id., 575, 577, 580, 582, 585. Cited. 230 C. 641, 647.

Cited. 3 CA 556, 562, 564. Cited. 7 CA 684, 685, 689, 690, 694, 696, 697, 699, 700. Cited. 15 CA 561, 563. Cited. 17 CA 405, 407. Requirements satisfied only by commencement of timely public hearing. 27 CA 412, 415, 417, 419, 420. Cited. 29 CA 469, 479. Cited. 35 CA 599, 601, 605. Cited. 43 CA 512.

Cited. 42 CS 57, 74.

Subsec. (a):

Cited. 206 C. 554, 561, 562, 566, 567. Cited. 209 C. 812. Cited. 211 C. 331, 335, 337, 338. Cited. 222 C. 911. Cited. 225 C. 432, 434, 436, 442, 444, 446. Cited. Id., 575, 581.

Cited. 3 CA 556, 562. Cited. 7 CA 684, 690, 691, 693, 695, 697, 699. Cited. 14 CA 365, 368, 370. Cited. 23 CA 256, 257. Cited. 27 CA 412, 418, 419. Cited. 33 CA 281, 282. Cited. 35 CA 317, 322. Cited. Id., 599, 604. Cited. 43 CA 512. Trial court properly determined that failure of planning and zoning commission to comply with statutory notice and hearing requirements entitled individual plaintiffs to automatic approval of their application for special permit and site plan approval; notice of commission



hearing was invalid and because failure to give notice was a jurisdictional defect, action of commission in denying plaintiffs' application was void. 52 CA 763.

Cited. 41 CS 196, 207.

osec. (b):

Cited. 192 C. 353, 356, 358, 359, 361, 363 365. Cited. 194 C. 152, 158. Cited. 209 C. 812. Cited. 211 C. 331, 332, 334 338. Cited. 222 C. 269, 275, 276. Cited. 224 C. 44, 47, 48. Cited. 225 C. 432, 438, 439, 441. Cited. Id., 575, 581, 583, 584, 586, 587. Cited. 226 C. 684, 692.

Cited. 2 CA 489, 491. Cited. 3 CA 556, 557, 560 565. Cited. 7 CA 684, 686, 691, 694 698. Cited. 21 CA 347, 350. Cited. Id., 421 424. Cited. 27 CA 412, 418. Cited. 35 CA 317, 322, 323. Section not unconstitutional just because it does not expressly provide for a right of appeal from automatic approval of site plan applications. Id., 599 606, 608, 609. Cited. 37 CA 348, 352.

Subsec. (c):

Cited. 192 C. 353, 365; Id., 367, 369, 370. Cited. 194 C. 187, 189. Cited. 206 C. 554, 556.

Cited. 3 CA 556, 560 563. Cited. 7 CA 684, 691.

Subsec. (e):

Cited. 222 C. 269, 274.

(Return to TOC) (Return to Chapters) (Return to Titles)

**Sec. 8-7e. Notice to adjoining municipalities of applications or requests.** The zoning board of appeals of any municipality shall notify the clerk of any adjoining municipality of the pendency of any application or request concerning any project on any site in which: (1) Any portion of the property affected by a decision of such zoning board of appeals is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application or request. No hearing may be conducted on any application or request unless the adjoining municipality has received the notice required under this section. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application or request.

(P.A. 87-307, S. 2; P.A. 89-175, S. 4, 7.)

History: P.A. 89-175 changed mailing requirement for notice to adjoining municipality from registered mail to certified mail, return receipt requested.

Cited. 219 C. 352, 361.

(Return to TOC) (Return to Chapters) (Return to Titles)

**Sec. 8-8. Appeal from board to court. Review by Appellate Court.** (a) As used in this section: (1) "Aggrieved person" means a person aggrieved by a decision of a board and includes any officer, department, board or bureau of the municipality charged with enforcement of any order, requirement or decision of the board. In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, "aggrieved person" includes any person

owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board.

(?) "Board" means a municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or other board or commission the decision of which may be appealed pursuant to this section, or the chief elected official of a municipality, or his designee, in a hearing held pursuant to section 22a-250, whose decision may be appealed.

(b) Except as provided in subsections (c), (d) and (q) of this section and sections 7-147 and 7-147i, any person aggrieved by any decision of a board may take an appeal to the superior court for the judicial district in which the municipality is located. The appeal shall be commenced by service of process in accordance with subsections (e) and (f) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes. The appeal shall be returned to court in the same manner and within the same period of time as prescribed for civil actions brought to that court.

(c) In those situations where the approval of a planning commission must be inferred because of the failure of the commission to act on an application, any aggrieved person may appeal under this section. The appeal shall be taken within twenty days after the expiration of the period prescribed in section 8-26d for action by the commission.

(d) Any person affected by an action of a planning commission taken under section 8-29 may appeal under this section. The appeal shall be taken within thirty days after notice to him of the adoption of a survey, map or plan or the assessment of benefits or damages.

(e) Service of legal process for an appeal under this section shall be directed to a proper officer and shall be made by leaving a true and attested copy of the process with, or at the usual place of abode of, the chairman or clerk of the board, and by leaving a true and attested copy with the clerk of the municipality. Service on the chairman or clerk of the board and on the clerk of the municipality shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the chairman or clerk of the board or the clerk of the municipality a necessary party to the appeal.

(f) Service of process shall also be made on each person who petitioned the board in the proceeding, provided his legal rights, duties or privileges were determined therein. However, failure to make service within fifteen days on parties other than the board shall not deprive the court of jurisdiction over the appeal. If service is not made within fifteen days on a party in the proceeding before the board, the court, on motion of the party or the appellant, shall make such orders of notice of the appeal as are reasonably calculated to notify the party not yet served. If the failure to make service causes prejudice to the board or any party, the court, after hearing, may dismiss the appeal or may make such other orders as are necessary to protect the party prejudiced.

(g) The appeal shall state the reasons on which it has been predicated and shall not stay proceedings on the decision appealed from. However, the court to which the appeal is returnable may grant a restraining order, on application, and after notice to the board and cause shown.

(h) Within thirty days after the return date to court, or within any further time the court allows, the board shall transmit the record to the court. The record shall include, without limitation, (1) the original papers acted on by the board and appealed from, or certified copies thereof, (2) a copy of the transcript of the stenographic or sound recording prepared in accordance with section 8-7a, and (3) the written decision of the board including the reasons therefor and a statement of any conditions imposed. If the board does not provide a transcript of the stenographic or the sound recording of a meeting where the board deliberates or makes a decision on a petition, application or request on which a public hearing was held, a certified, true and accurate transcript of a stenographic or sound recording of the meeting prepared by or on behalf of the applicant or any other party shall be admissible as part of the record. By stipulation of all parties to the appeal, the record may be shortened. A party unreasonably refusing to stipulate to limit the record

may be taxed by the court for additional costs. The court may require or permit subsequent corrections or additions to the record.

- (i) Any defendant may, at any time after the return date of the appeal, make a motion to dismiss the appeal. If the basis of the motion is a claim that the appellant lacks standing to appeal, the appellant shall have the burden of proving his standing. The court may, on the record, grant or deny the motion. The court's order on the motion may be appealed in the manner provided in subsection (n) of this section.
- (j) The court shall review the proceedings of the board and shall allow any party to introduce evidence in addition to the contents of the record if (1) the record does not contain a complete transcript of the entire proceedings before the board, including all evidence presented to it, pursuant to section 8-7a, or (2) it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court may take the evidence or may appoint a referee or committee to take such evidence as it directs and report the same to the court, with his or its findings of facts and conclusions of law. Any report of a referee or committee shall constitute a part of the proceedings on which the determination of the court shall be made.
- (k) The court, after a hearing thereon, may reverse or affirm, wholly or partly, or may modify or revise the decision appealed from. If a particular board action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the board decision or orders the particular board action. In an appeal from an action of a planning commission taken under section 8-29, the court may also reassess any damages or benefits awarded by the commission. Costs shall be allowed against the board if the decision appealed from is reversed, affirmed in part, modified or revised.
- (l) Appeals from decisions of the board shall be privileged cases and shall be heard as soon as is practicable unless cause is shown to the contrary.
- (m) No appeal taken under subsection (b) of this section shall be withdrawn and no settlement between parties to any such appeal shall be effective unless and until a hearing has been held before the Superior Court and such court has approved such proposed withdrawal or settlement.
- (n) There shall be no right to further review except to the Appellate Court by certification for review, on the vote of two judges of the Appellate Court so to certify and under such other rules as the judges of the Appellate Court establish. The procedure on appeal to the Appellate Court shall, except as otherwise provided herein, be in accordance with the procedures provided by rule or law for the appeal of judgments rendered by the Superior Court unless modified by rule of the judges of the Appellate Court.
- (o) The right of a person to appeal a decision of a board to the Superior Court, and the procedure prescribed in this section, shall be liberally interpreted in any case where a strict adherence to these provisions would work surprise or injustice. The appeal shall be considered to be a civil action and, except as otherwise required by this section or the rules of the Superior Court, pleadings may be filed, amended or corrected, and parties may be summoned, substituted or otherwise joined, as provided by the general statutes.
- (p) If any appeal has failed to be heard on its merits because of insufficient service or return of the legal process due to unavoidable accident or the default or neglect of the officer to whom it was committed, or the appeal has been otherwise avoided for any matter of form, the appellant shall be allowed an additional fifteen days from determination of that defect to properly take the appeal. The provisions of section 52-592 shall not apply to appeals taken under this section.
- (q) In any case in which a board fails to comply with a requirement of a general or special law, ordinance or regulation governing the content, giving, mailing, publishing, filing or recording of any notice either before a hearing or of an action taken by the board, any appeal or action by an aggrieved person to set aside the decision or action taken by the board on the grounds of such noncompliance shall be taken within two years of the date of that decision or action.

(1949 Rev., S. 844; 1951, 1955, S. 379d; 1959, P.A. 460, S. 2; 1963, P.A. 45; February, 1965, P.A. 622, S. 3; 1967, P.A. 348; 712; 1971, P.A. 870, S. 9; P.A. 74-183, S. 179, 291; P.A. 76-436, S. 158, 681; P.A. 77-470; P.A. 78-280, S. 1, 127; P.A. 81-165; June Sp. Sess. P.A. 83-29, S. 13, 82; P.A. 84-227, S. 1; P.A. 85-284, S. 3; P.A. 86-236, S. 2; P.A. 88-79, S. 1, 4; P.A. 89-356, S. 1; P.A. 90-286, S. 1, 2, 9; P.A. 91-219; P.A. 92-249, S. 8; P.A. 99-238, S. 5, 8; P.A. 00-84, S. 3, 6; 00-108, S. 2.)

History: 1959 act deleted qualification in sentence re taking of evidence in addition to record "if said record does not contain a stenographic report or a complete mechanical recording of the entire proceedings before said board including all evidence presented to it"; 1963 act added to the same sentence "if the record does not contain a complete transcript of the entire proceedings before said board, including all evidence presented to it, pursuant to section 8-7a"; 1965 act provided fifteen days allowed for taking appeal run from date decision was published rather than from date it was rendered; 1967 acts allowed costs against board if decision "reversed, affirmed in part, modified or revised" rather than allowing costs only when court decides board acted with gross negligence, in bad faith or with malice as previously and allowed appeals by persons owning land adjacent to land involved in decision; 1971 act added provisions concerning appeals to supreme court; P.A. 74-183 included judicial districts; P.A. 76-436 substituted superior court for court of common pleas, effective July 1, 1978; P.A. 77-470 allowed appeals by persons whose land is within one-hundred-foot radius of land involved in decision; P.A. 78-280 deleted reference to counties; P.A. 81-165 allowed for service of notice upon the clerk of the municipality; June Sp. Sess. P.A. 83-29 deleted reference to supreme court and substituted appellate court in lieu thereof; P.A. 84-227 inserted Subsec. indicators, added Subsec. (d) re a hearing on a motion to dismiss made by the person who applied for the board's decision where each appellant has the burden of proving his standing to bring the appeal, and added Subsec. (h) prohibiting withdrawal or settlement without court approval; P.A. 85-284 provided for notice of appeals to be given to the chairman or clerk of the board and the clerk of the municipality, rather than just one; P.A. 86-236 amended Subsec. (c) to require the return of the transcript of the stenographic or sound recording; P.A. 88-79 amended Subsec. (b) to add proviso that service of the notice of the appeal upon the clerk of the municipality is for the purpose of providing additional notice of such appeal to the board and does not thereby make such clerk a necessary party to such appeal; P.A. 89-356 entirely reorganized existing provisions and added Subsec. (a) defining "aggrieved person" and "board", added Subsec. (c) re the procedure for taking an appeal where the approval of the planning commission must be inferred, formerly part of Sec. 8-28, added Subsec. (d) re the procedure for taking an appeal by a person affected by an action of a planning commission under Sec. 8-29, formerly part of Sec. 8-30, added Subsec. (f) re service of process on parties other than the board and the consequences and court remedies if such service is not made, added provisions in Subsec. (i) requiring the record to include the board's findings of fact and conclusions of law, authorizing the record to be shortened by stipulation and additional costs to be taxed against a party who unreasonably refuses to stipulate to limit the record and authorizing the court to require or permit subsequent corrections or additions to the record, added provisions in Subsec. (l) authorizing the court in sustaining an appeal to render a judgment that modifies the board decision or orders the particular board action if a particular board action is required by law and authorizing the court in an appeal from an action of a planning commission taken under Sec. 8-29 to reassess damages or benefits awarded by the commission, formerly part of Sec. 8-30, added Subsec. (p) providing for a liberal interpretation of the right to appeal and the appeal procedure and providing that an appeal shall be considered a civil action, and added Subsec. (q) allowing an appellant additional time to take the appeal if the appeal has failed to be heard on its merits because of certain defects and providing that Sec. 52-592 shall not apply to appeals taken under this section; P.A. 90-286 amended Subsec. (b) to replace "The appeal shall be taken" with "The appeal shall be commenced by service of process in accordance with subsections (e) and (f) of this

section" and to replace "The appeal shall be commenced and returned to court in the same manner as prescribed for civil actions brought to that court" with "The appeal shall be returned to court in the same manner and within the same period of time as prescribed for civil actions brought to that court" and amended Subsec. (i) to replace requirement that the board transmit the record "within thirty days after the appeal is served" with "within thirty days after the return date to court"; P.A. 91-219 amended Subsec. (i) to require that the record include the written decision of the board rather than the board's findings of fact and conclusions of law; P.A. 92-249 amended Subdiv. (2) of Subsec. (a) to include the chief elected official of a municipality in the definition of "board" re hearings under Sec. 22a-250; P.A. 99-238 amended Subsec. (b) by adding reference to new Subsec. (r), and added new Subsec. (r) re appeal of aggrieved person to set aside decision or action of board for noncompliance with requirement of notice of content, giving, mailing, publishing, filing or recording of hearing or action taken by board within two years of the date of such decision or action, effective July 1, 2000; P.A. 00-84 revised effective date of P.A. 99-238 to specify applicability of section as amended by that act to errors, irregularities and omissions occurring on or after January 1, 1999, effective July 1, 2000; P.A. 00-108 deleted former Subsec. (h) re surety bond, relettered the subsections accordingly and amended new Subsec. (h) to add provision re transcripts of meetings.

See uncodified P.A. 88-79, S. 3 re validation and reopening of certain appeals which failed to name the clerk of the municipality as a party to the appeal in the appeal citation.

Right of appeal under this section is from decision of zoning board of appeals under zoning laws contained in this chapter and does not extend to decisions of such board under another statute. 116 C. 555. Power of court to modify or revise does not include power to substitute its own discretion for that of board; must find that board acted illegally or abused discretion. 120 C. 455. Cited. 123 C. 263. Appeal from zoning board is not an action within meaning of section 54-131 which permits a new action when it abated. 126 C. 603. Under same language in New Haven charter right of appeal held not to be contingent upon restraining order; no vested right acquired by applicant by virtue of fact no such order was obtained when opponent appealed. 127 C. 309. Recognizance without surety is insufficient; failure to file bond sound ground for abatement of appeal. 131 C. 657. No appeal from zoning commission under former statutes. 133 C. 248. Cited. 135 C. 305. Reasons for decision and transcript of evidence both constitute "proceedings" before board. 136 C. 1. Finding should contain only facts which court finds on basis of evidence taken by it. 136 C. 452. Cited. 138 C. 500. Plaintiff held an aggrieved person. 139 C. 463. Competitors are not aggrieved persons but owners of residential property in vicinity are. 139 C. 577. "Any person aggrieved" includes any landowner or resident within city whose situation is such that decision may adversely affect him in use or occupancy of his property. 140 C. 65. Prayer for relief to effect that decision of board of zoning appeals be modified or reversed is not necessary. 142 C. 277. Cited. 142 C. 415; 142 C. 659; 143 C. 280; 144 C. 61. If sole basis of plaintiff's grievance was that new business would create competition, he would not be an aggrieved person. Any taxpayer of a town who feels aggrieved at granting of license for sale of liquors therein has right of appeal. 144 C. 160. On an appeal from zoning board of appeals, record made before board should be annexed to, and incorporated by reference in, answer of board. Where there is an incompleteness in summary of evidence, court must take evidence to determine what facts and considerations were presumptively in minds of members of board when they acted. 144 C. 332. Cited. 144 C. 425, 493. Admissibility of evidence outside of record. 144 C. 560. Wide and liberal discretion in board. *Id.* Finding that plaintiff is not an aggrieved person divests court of jurisdiction. 145 C. 136. Admissibility of evidence not on record and of evidence not presented at hearing. 145 C. 218. Change in comprehensive plan, though not change in zone itself, may adversely affect parties outside immediate vicinity. 145 C. 237. Cited. 145 C. 325, 416, 435. Considerations authorizing variance are not identical with those justifying an outright change of zone.

145 C. 468. Zoning commission cannot appeal unless ruling or order of its own is in issue. 145 C. 655. To be an aggrieved person, where traffic in intoxicating liquor is not involved, one must be found to have been specially and injuriously affected in his property or other legal rights. *Id.*, 149 C. 284. On appeal, court cannot conduct a trial de novo and substitute its findings and conclusions for decision of board. 146 C. 27. Denial of motion to present evidence in addition to record held indicative that additional testimony was not necessary for equitable disposition of appeal. 146 C. 547. When building met zoning requirements, building inspector exceeded his authority in imposing additional conditions for certificate of occupancy. 146 C. 570. Scope of authority of committee appointed to take evidence. 146 C. 588. Action of board held an abuse of discretion since facts did not warrant granting of variance. 146 C. 595. Aggrievement from which one may appeal does not arise until board has acted. 146 C. 665. Former statute: On appeal admission of testimony not presented to commission is within discretion of court. 147 C. 65. Evidence of former applications admissible only when subsequent application seeks substantially same relief. *Id.* Limits of court's power in reviewing refusal of board to grant variance. 147 C. 469. Cited. 148 C. 33, 299. Plaintiff's property bordered defendant's land which had received a zoning variance; plaintiff held to be an aggrieved person. 148 C. 492. Inferentially requires stenographic transcript or mechanical recording to be filed with court with return of board's proceedings. 148 C. 599. Inadequate summary required trial court to hear evidence. *Id.*, 600. Evidence to prove plaintiff aggrieved admissible. *Id.*, 602. One cannot qualify as aggrieved person solely because zone change may permit operation of business in competition with him. 149 C. 284. Motion for permission to offer additional evidence on appeal called for decision, in exercise of court's discretion, as to whether additional evidence was necessary for equitable disposition of appeal. 149 C. 413; 150 C. 285. Where court does not hear evidence, but decides appeal on record returned by zoning commission, no finding should be made. 149 C. 414. Cited. 149 C. 681. Plaintiffs were aggrieved persons within meaning of statute if board's decision affected them directly or in relation to a specific, personal interest, as distinguished from a general interest, in the subject matter. 149 C. 698. Although plaintiff could not, in its appeal from denial of permit, attack constitutionality of regulations under which it sought permit, it could attack their constitutionality in an independent proceeding. 149 C. 712. Under New Haven charter, person aggrieved by decision of zoning enforcement officer may appeal to board of zoning appeals which shall hear and determine reasonableness of decision. In such case, function of court on appeal from board of appeals is to decide whether board correctly interpreted ordinance and applied it with reasonable discretion to facts. 150 C. 113. Plaintiff has burden of proving that it is aggrieved. This burden requires that it establish that it was specially and injuriously affected in its property rights or other legal rights. It is not sufficient to show that action complained of would permit the operation of business in competition with its business. 150 C. 285. History discussed; reversal of decision at 23 CS 6; failure of board of appeals to comply with mandate of section 8-7a renders action voidable at option of an aggrieved person. 150 C. 411. Party claiming aggrievement must show he is specifically and injuriously affected, mere generalities and fears are not enough. 150 C. 696. Right of appeal begins to run from effective date of decision which is controlled by section 8-7. 151 C. 378. Cited. 151 C. 510; 646. Time for taking appeal from zoning board controlled by section 8-7 rather than section 8-8. 151 C. 646. Although applicant has burden of proving board acted in abuse of its discretion, board must show justification on record for denial of variance. 152 C. 247. Building inspector is authorized to take appeal from board's action in granting variance since he is "charged with the enforcement" of the decision of the board. 152 C. 311. Cited. 152 C. 660, 661. To be an "aggrieved" person, in a case in which traffic in intoxicating liquor is not involved, one has to be specially and injuriously affected in his property or other legal rights. 153 C. 37. Plaintiff, as a taxpayer, is an aggrieved person in a case in which traffic in liquor is involved without having to show that he has an interest peculiar to himself. 153 C. 117. Where transcript of board hearing was incomplete and

plaintiff raised constitutional issue of confiscation, he should have been permitted to introduce additional evidence. 153 C. 343, 344. Cited. 153 C. 433, 437. In order to qualify as aggrieved persons under this section the plaintiffs must show that the value of their property would be lessened or that their legal rights would be injuriously affected. 154 C. 46, 47. Right to produce evidence under this section may be waived by stipulation of a party. 154 C. 393. Plaintiffs did not qualify as aggrieved persons to appeal granting of variance where only claim to aggrievement was that their property adjoined that for which variance was granted. 155 C. 241, 242. In light of record and express allegations of impropriety and illegality additional testimony of what occurred at executive session of board was necessary and permitted. *Id.*, 245. Where plaintiff appealed claiming amendments were an unconstitutional denial of due process since they were confiscatory and would put him out of business, trial court should have permitted introduction of additional evidence limited to question of constitutionality of ordinance, complete transcript of hearings before commission being insufficient evidence in the case. *Id.*, 265. Cited. 155 C. 365. Order of reference for a finding of facts on the issue of aggrievement and to take additional evidence to complete the record is not final judgment from which appeal lies under section 52-263. *Id.*, 617. While plaintiffs were not "aggrieved persons" appeal was considered because of unusual circumstances of trial below. 157 C. 520. When construction of new building under zoning variance sought would affect use of plaintiff's parking facilities, plaintiff is an aggrieved person entitled to appeal from zoning board's decision. 158 C. 187. New evidence may be introduced only on a direct appeal from action of board, not in action to enjoin successful applicants for a zoning variance. 158 C. 202. Limit of time for appeal prevented retroactive application of procedural amendment giving abutting landowners statutory right to appeal. 158 C. 331. Appeals must be taken under this section and section 8-9 rather than any city charter sections. Aggrievement means plaintiffs were specially and injuriously affected in their property or other legal rights by board's decision. 159 C. 1. Trial court may not substitute judgment for that of town council in granting a change of zone for special development district. 159 C. 212. When zoning authority gives reasons for action it takes, question for court to determine on appeal is whether reasons assigned are reasonably supported by the record and pertinent to considerations which must be applied under applicable zoning regulations. 159 C. 534, 540. Abutting landowners have a standing to appeal a zoning commission's decision. 160 C. 239. Cited. 161 C. 32. Cited. 162 C. 45, 74, 238. Cited. 163 C. 379, 615. Abutting landowner who successfully opposed application is not entitled to notice of appeal. 164 C. 187. Record of board proceeding, including exhibits, may be reconstructed by evidence in court. 164 C. 215. Cited. 165 C. 185. Cited. 166 C. 102, 104 106. Cited. 166 C. 112. A resident taxpayer of a town is an "aggrieved person" with standing to appeal decision of town's zoning board to extend a nonconforming liquor store use. 167 C. 596. There is no aggrievement which is prerequisite to right of appeal when a "floating zone" is designated without attachment to particular property or area in the town. 168 C. 285. Cited. 171 C. 480, 484 486. Cited. 172 C. 286. Cited. 173 C. 408 412. Cited. 174 C. 493, 495, 496, 498, 499; 176 C. 475, 476. Cited. 177 C. 440, 444; 178 C. 364 366. Cited. 179 C. 250, 253; *id.*, 650, 653; 180 C. 296, 297. Cited. 181 C. 230, 232; *Id.*, 556, 558. Cited. 185 C. 135. Cited. 186 C. 32, 37; *Id.*, 106, 113, 116, 117. Provisions of this statute which are inconsistent with provisions of Sec. 51-197d (11) are repealed by implication. 188 C. 555 557. Cited. 190 C. 746 748. Cited. 195 C. 276 280, 283. Cited. 196 C. 623, 636. Life tenant has sufficient ownership to be entitled to recognition as a "person owning land" with right of appeal. 203 C. 317, 319 323. Cited. 205 C. 413, 419. Cited. *Id.*, 703, 705. Cited. 208 C. 146; *Id.*, 476, 477, 479; *Id.*, 480, 484, 485, 487, 488. Cited. 209 C. 652, 655, 669. Cited. 211 C. 78, 81; *Id.*, 85, 92, 93; *Id.*, 416, 422. Cited. 212 C. 375, 378. Cited. 213 C. 604, 609. Cited. 214 C. 400, 405. Cited. 217 C. 588, 593, 607. Cited. 219 C. 511, 514 516. Cited. 220 C. 504, 585. Cited. 221 C. 374, 379, 383, 384. Cited. 222 C. 262, 264; *Id.*, 380, 383, 394. Upon judicial appeal from zoning board of appeals pursuant to this section, trial court must focus on the decision of the

board because it is the subject of the appeal. Judgment of appellate court in *Caserta v. Zoning Board of Appeals*, 28 CA 256, affirmed in part and modified in part. 226 C. 80, 90, 91. Cited. Id., 230, 232; Id., 314, 318, 340, 343. Cited. 228 C. 476, 477. Cited. 229 C. 178, 188. Cited. 232 C. 122, 126. Cited. Id., 184, 186, 194, 198, 201, 202. Where applicant denied for hardship plaintiff not required to submit alternative plans before submitting claim for inverse condemnation. 247 C. 196. Cited (as June Sp. Sess. P.A. 83-29, S. 13). 1 CA 285, 286. Cited. 2 CA 384 387. Cited. Id., 506, 509. Cited Id., 595 597. Cited. 3 CA 172, 173. Cited. Id., 496. A coholder of a life interest in property is a "person owning land" entitled to appeal under this statute. Id., 550, 552, 554, 555. Cited. Id., 576, 577, 578. Cited. 4 CA 205, 206. Cited. Id., 271, 273. Cited. Id., 500, 502. Cited. 5 CA 455, 456. Cited. Id., 520, 523. Cited. 6 CA 110 112. Cited. Id., 317, 319, 320. Cited. Id., 715, 718. Cited. 9 CA 538, 540. Cited. 13 CA 699, 702. Cited. 15 CA 729, 730. Cited. 16 CA 281, 283; Id., 604, 610; judgment reversed, see 212 C. 628 et seq. Cited. 17 CA 150, 153. Cited. 18 CA 69, 71; Id., 85, 91; Id., 159, 161; Id., 195; Id., 488, 494, 495; Id., 549, 550; Id., 722, 724. Public act 88-79 cited. Id., 722, 727 729. Cited. 20 CA 302, 305; Id., 474, 483, 485; Id., 561, 562. Cited. 21 CA 340 342. Cited. 22 CA 407, 408; Id., 606, 608. Cited. 23 CA 75, 80; Id., 232, 239; Id., 256, 257; Id., 258, 262. Cited. 24 CA 172, 174. Cited. 25 CA 199. Cited. 27 CA 297, 299; Id., 590, 592. Cited. 28 CA 344, 352. Cited. 29 CA 402, 404. Cited. 32 CA 799, 810. Cited. 34 CA 685, 687. Cited. 35 CA 204, 208. Cited. Id., 317. Cited. 43 CA 545. Cited. Id., 563. Wide discretion in board. 1 CS 89. Compared with number 305 of the special acts of 1931. 10 CS 194. Superior court has jurisdiction to hear appeals from board. 11 CS 489. Mode of service on board discussed. Notice to chairman sufficient compliance; time for appeal excludes day of act. 17 CS 116. Officer of corporation which would be affected by variance is not "person aggrieved." 15 CS 362. Building inspector is. 19 CS 349. Resident landowner of town not living in borough is "aggrieved person" in action by borough zoning board. 19 CS 446. In an appeal from granting of variance for sale of lot, a "person aggrieved" held to include any landowner, resident or taxpayer of municipality affected. 21 CS 102. History discussed; where, due to mechanical failure of the recording machine no transcript is available, court may not remand case for rehearing, but it may permit introduction of additional evidence to determine what considerations were presumptively in minds of board members. 23 CS 6. Reversed, 150 C. 411, supra. Cited. 25 CS 276. This section and sections 8-3 and 8-9 are not so linked that the date of publication of the notice must be considered as the date the decision was rendered. 26 CS 88. Part owner of property is not precluded, merely because her co-owners have not joined with her, from showing that she, as an aggrieved person, has the right to appeal to the court. 26 CS 170. Circumstances under which board's decisions should be overruled discussed. 26 CS 256. Equitable relief outside the framework of appeal procedure set up by statute might be granted in the presence of allegations of fraudulent connivance or collusion on the part of local zoning board of appeals. 26 CS 334, 335. Plaintiffs have been granted equitable relief when the zoning authority lacked the jurisdiction to take the action which the plaintiff was challenging. Id. Equitable relief by way of an injunction will not be granted if the court finds that the legal remedy afforded by the statute has not been exhausted. Id. Chairman of town planning and zoning commission is aggrieved person within this section and may appeal variance granted defendant by zoning board of appeals of town. 28 CS 278. Cited. 29 CS 5. Cited. 30 CS 157, 160. Cited. 31 CS 197. Cited. 32 CS 104, 108, 115. Cited. 32 CS 223. Cited. 32 CS 625. Cited. 33 CS 175. Cited. 33 CS 607. Cited 35 CS 246, 247 257. Portion of this section in conflict with amendment to Sec. 51-197d is repealed by implication. 38 CS 356 358. Cited. Id., 492 495. Cited. 39 CS 426; Id., 523, 525 527. Cited. 41 CS 218; Id., 398, 401. Cited. 42 CS 256, 258. Cited. 43 CS 373, 374. Subsec. (a): Cited. 203 C. 317, 318. Cited. 205 C. 413, 414. Failure to allege publication provisions is not a jurisdictional defect requiring dismissal of appeal. 211 C. 78, 80; Id., 416, 419, 426; Id., 662 666, 669.



670. Cited. 212 C. 628, 630. Cited. 214 C. 407, 426. Cited. 218 C. 65, 80. Subdiv. (1) cited. Id. Cited. Id., 265, 266; Id., 438, 440. Cited. 219 C. 511, 514. Subdiv. (1) cited. 225 C. 1, 3, 5, 6. Cited. Id., 1, 5, 7, 8. Cited. 230 C. 140, 147. Subdiv. (1) cited. 233 C. 198, 201. Cited. 237 C. 184, 188 191, 193 195, 197,

Cited. 4 CA 633, 635, 637, 638. Cited. 6 CA 110. Statutory aggrievement and classical aggrievement discussed. 7 CA 632, 635 638. Cited. 17 CA 150, 151. Cited. 18 CA 99, 100; Id., 195, 197, 198; Id., 488, 494 496. Cited. 19 CA 357, 359, 360. Subdiv. (1) cited. 27 CA 297, 301, 302. Subdiv. (1) cited. 30 CA 511, 512, 514, 515; 31 CA 643, 645. Subdiv. (2) cited. 35 CA 317, 320. Subdiv. (1) cited. 43 CA 563; 45 CA 653. Since zoning is meant to protect the public at large, without some particular harm, such as the maintenance of a nuisance affecting the land of a plaintiff or a statute allowing the maintenance of plaintiff's lawsuit, the plaintiff can have no standing. 49 CA 669.

Subdiv. (1) cited. 41 CS 593, 594. Subdiv. (1) cited. 42 CS 256, 279.

Subsec. (b):

Failure to name statutorily mandated necessary party in citation is a jurisdictional defect. 205 C. 413, 414, 416 419. Mandates that clerk of municipality be properly cited and served as a necessary party. 206 C. 374, 376 380, 382, 383. Cited. 207 C. 67, 70. Cited. 208 C. 146, 151; Id., 476, 477, 479; Id., 480, 485, 489. Cited. 211 C. 416, 421, 422. Clerk of fire district is a clerk of municipality required to be served. 212 C. 375, 377 380. Cited. Id., 471, 477; Id., 628, 634, 635. Cited. 218 C. 438, 440. Subdiv. (1) cited. 220 C. 455, 458. Cited. 221 C. 374, 383. Cited. 222 C. 374, 376. Cited. 224 C. 823, 824. Cited. 225 C. 1, 2; Id., 691, 692; Id., 731, 738. Cited. 227 C. 71, 78. Cited. 228 C. 476, 478; Id., 785, 787. Cited. 232 C. 419, 428, 430. Cited. 235 C. 448, 452. Cited. 237 C. 184, 202.

Cited. 13 CA 165. Cited. 17 CA 150, 152. Cited. 18 CA 99, 101, 102; Id., 195, 199 203; Id., 488, 494; Id., 549, 550. Cited. 24 CA 172 175. P.A. 88-79 cited. Id. Cited. 25 CA 199, 200, 203. Cited. 27 CA 297, 301. Cited. 29 CA 28, 33; Id., 402, 404. Cited. 31 CA 643, 645. Cited. 35 CA 317, 320, 321; Id., 646, 648; judgment reversed, see 235 C. 448 et seq. Cited. 43 CA 563. Cited. 45 CA 89. Cited. Id., 653. Trial court improperly held that special permit was not supported by substantial evidence in the record, substituted its interpretation of town's regulations and its judgment for those of the commission. 53 CA 636.

Cited. 43 CS 373, 376.

Subsec. (c):

Cited. 212 C. 471, 472, 476. Cited. 219 C. 511, 515, 516. Cited. 236 C. 681, 690.

Cited. 35 CA 599, 608. Cited. 37 CA 105, 123.

Cited. 43 CS 373, 376.

Subsec. (d):

Cited. 205 C. 413, 416. Cited. 211 C. 78, 81; Id., 416, 422. Cited. 212 C. 628, 631, 636 638.

Cited. 16 CA 281, 283, 284; Id., 604, 612, 613, 618; judgment reversed, see 212 C. 628 et seq.

Cited. 43 CS 373, 376.

Subsec. (e):

Cited. 211 C. 662, 665. Cited. 219 C. 511, 515. Cited. 234 C. 498, 500.

Cited. 16 CA 604, 607; judgment reversed, see 212 C. 628 et seq. Cited. 20 CA 474, 484; Id., 561, 566.

Cited. 23 CA 75, 80. Cited. 24 CA 172, 175. Cited. 45 CA 653.

Cited. 43 CS 373, 376.

Subsec. (f):

Cited. 215 C. 58, 61.

Cited. 5 CA 520, 524. Cited. 20 CA 474, 484. Cited. 43 CA 606. Cited. 45 CA 653.

Subsec. (g):

Cited. 206 C. 374, 375. Cited. 239 C. 515.

Cited. 3 CA 556, 557. Cited. 8 CA 556, 558, 565. Cited. 21 CA 421, 424. Cited. 32 CA 799, 810.  
Subsec. (j).

Cited. 226 C. 757, 763. Cited. 237 C. 184, 185, 188, 192, 193.

Cited. 35 CA 599, 601.

Subsec. (k):

Cited. 218 C. 438, 440. Cited. 233 C. 198, 205.

Cited. 25 CA 137, 140. Cited. 35 CA 599, 605. Cited. 40 CA 840, 851. Cited. 43 CA 105. Subdiv. (2)  
cited. Id. Cited. Id., 512. Cited. Id., 563.

Cited. 43 CS 373, 377.

Subsec. (n):

Purpose of hearing is to protect public interest and neither a pretrial conference nor a court hearing to  
enforce a settlement met the statutory requirement. 247 C. 732.

Cited. 25 CA 199, 203 205.

Subsec. (o):

Cited. 220 C. 61, 65; Id., 584, 586. Cited. 222 C. 374, 376. Cited. 224 C. 823, 824. Cited. 225 C. 1, 2;  
Id., 691, 692; Id., 731, 738. Cited. 226 C. 230, 232; Id., 314, 340; Id., 757, 763. Cited. 228 C. 498, 502.  
Cited. 232 C. 122, 129, 130; Id., 270. Requirement of certification by Appellate Court held applicable to  
affordable housing land use appeals. 245 C. 257.

Cited. 25 CA 572, 573. Cited. 35 CA 204, 205; Id., 646, 647; judgment reversed, see 235 C. 448 et seq.

Subsec. (p):

Cited. 220 C. 929. Cited. 221 C. 374, 384. Cited. 222 C. 541, 544, 545.

Cited. 45 CA 653.

Subsec. (q):

Cited. 45 CA 653.

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**Sec. 8-9. Appeals from zoning commissions and planning and zoning commissions. Review by Appellate Court.** Appeals from zoning commissions and planning and zoning commissions may be taken to the Superior Court and, upon certification for review, to the Appellate Court in the manner provided in section 8-8.

(1949 Rev., S. 845; 1953, S. 381d; February, 1965, P.A. 622, S. 4; 1971, P.A. 870, S. 13; P.A. 74-183, S. 180, 291; P.A. 76-436, S. 159, 681; June Sp. Sess. P.A. 83-29, S. 19, 82.)

History: 1965 act included planning and zoning commissions; 1971 act added language allowing appeal to supreme court; P.A. 74-183 made no change; P.A. 76-436 substituted superior court for court of common pleas, effective July 1, 1978; June Sp. Sess. P.A. 83-29 deleted reference to supreme court and substituted appellate court in lieu thereof.

Cited. 136 C. 90; 143 C. 280; 145 C. 218, 237, 416, 435; 146 C. 665; 148 C. 33. Standard used by court in reviewing action of zoning commission. 148 C. 172. Cited. 149 C. 681; 151 C. 484; 155 C. 365; 157 C. 522. Determination that keeping of chickens and goats was not an "accessory use" to residential property was within discretion of local zoning board and, where board did not act illegally or in abuse of its discretion, will not be reversed on appeal. 158 C. 509. This section and section 8-8 govern appeals from final zoning authority of municipality. 159 C. 1. Amendment of sec. 8-8 is operative as to this adopting statute and does not remain unmodified in relation to this statute. 160 C. 239; 249. Cited. 162 C.

74. Cited. 165 C. 185. Cited. 168 C. 285. Cited. 173 C. 408, 409. Cited. 174 C. 493, 495, 496, 498, 499. Cited. 179 C. 250, 253. Cited. 186 C. 106, 109, 115 117. Cited. 211 C. 85, 92, 93. Cited. 214 C. 400, 404. Cited. 221 C. 374, 375, 380, 382 384. Cited. 225 C. 731, 737. Cited. 226 C. 80, 84. Cited. Id., 230. Cited. 232 C. 122, 126, 127, 129, 130. Cited. Id., 419, 428, 430. Cited. 2 CA 506, 509. Cited. Id., 595 597. Cited. 3 CA 172, 173. Cited. Id., 576 578. Cited. 4 CA 271, 273. Cited. 5 CA 520, 524. Cited. 6 CA 317. Cited. 43 CA 606. Cited. 17 CS 116; 19 CS 29. This section and sections 8-3 and 8-8 are not so linked that date of publication of notice must be considered as date decision was rendered. 26 CS 88. Plaintiffs' claim that logic dictates that legislature did not intend that there should be an inconsistent procedure relative to appeal from decisions of zoning boards of appeal and zoning boards and that therefore running of appeal period in case of zoning regulation should be contingent on statutory publication is without merit. Id., 90. Equitable relief outside the framework of appeal procedure set up by statute might be granted in the presence of allegations of fraudulent connivance or collusion on the part of local zoning board of appeals. 26 CS 334, 335. Plaintiffs have been granted equitable relief when the zoning authority lacked the jurisdiction to take the action which the plaintiff was challenging. Id. Equitable relief by way of an injunction will not be granted if the court finds that the legal remedy afforded by the statute has not been exhausted. Id. Cited. 38 CS 492 494.

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**Sec. 8-10. Appeals procedure to apply to all municipalities.** The provisions of sections 8-8 and 8-9 shall apply to appeals from zoning boards of appeals, zoning commissions or other final zoning authority of any municipality whether or not such municipality has adopted the provisions of this chapter and whether or not the charter of such municipality or the special act establishing zoning in such municipality contains a provision giving a right of appeal from zoning boards of appeals or zoning commissions and any provision of any special act, inconsistent with the provisions of said sections, is repealed.

(1953, S. 380d; November, 1955, S. N11.)

Legislative intent was to create right of appeal from every zoning commission in state. 143 C. 280. If sole basis of plaintiff's grievance was that new business would create competition, he would not be an aggrieved person. Any taxpayer of a town who feels aggrieved at granting of a license for sale of liquors therein has right of appeal. 144 C. 160. Appeal from zoning commission in New Haven county heard in court of common pleas in judicial district of Waterbury. 144 C. 600. Finding that plaintiff is not aggrieved person divests court of jurisdiction. 145 C. 136. Cited. 145 C. 237, 416, 435; 146 C. 588, 665; 148 C. 33, 299; 149 C. 681; 151 C. 635; 155 C. 365. Appeals from final zoning authority in Stamford are governed by sections 8-8 and 8-9 rather than any provisions of city's charter. 159 C. 1. Legislative intent is to make sections 8-8 and 8-9 applicable to every municipality in state. 160 C. 239; 249. Cited. 165 C. 185. Includes right of appeal from Norwich city council acting as a zoning commission pursuant to a city charter granted under a special act. 167 C. 579. Section does not intend to prohibit local arrangements by which commission decision may be appealed to a board of appeals, discusses appeals routes of zoning cases. 186 C. 106, 109, 116, 117. Cited. 214 C. 400, 403 407. Cited. 221 C. 374, 380, 383. Cited. 226 C. 230, 232.

Cited. 2 CA 595 597. Cited. 19 CA 357, 359. Cited. 27 CA 412, 416.

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**Sec. 8-11. Disqualification of members of zoning authorities.** No member of any zoning commission or board and no member of any zoning board of appeals or of any municipal agency exercising the powers of any zoning commission or board of appeals, whether existing under the general statutes or under any special act, shall appear for or represent any person, firm, corporation or other entity in any matter pending before the planning or zoning commission or board or said board of appeals or any agency exercising the powers of any such commission or board in the same municipality, whether or not he is a member of the board or commission hearing such matter. No member of any zoning commission or board and no member of any zoning board of appeals shall participate in the hearing or decision of the board or commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of the commission or board and, unless otherwise provided by special act, any municipality may provide by ordinance that an elector may be chosen, in a manner specified in the ordinance, to act as a member of such commission or board in the hearing and determination of such matter, except that replacement shall first be made from alternate members pursuant to the provisions of sections 8-1b and 8-5a.

(1951, S. 382d; 1959, P.A. 146, S. 3; 1971, P.A. 763, S. 6; P.A. 74-192.)

History: 1959 act required that when member or alternate is disqualified, replacement must first be made from alternates; 1971 act deleted provision concerning replacement of disqualified member by elector and added reference to Sec. 8-1b; P.A. 74-192 restored provision concerning selection of elector as replacement if authorized by ordinance.

See Sec. 8-21 re disqualification of planning commission members.

Cited. 144 C. 493; 146 C. 531; 148 C. 603. Evidence of statement of member of board before planning and zoning commission on same matter admissible for development of disqualification. 148 C. 604.

ed. 150 C. 147. Where zoning commission voted to amend regulations to make proposed use a permitted use in zone, and one of commission members who voted had a financial interest in proposed change, held participation by interested member in action rendered attempted amendment invalid. 150 C. 495. Previous showing by commission member of open opposition to plaintiff, coupled with other acts of interest, sufficient to disqualify him. 151 C. 476. Failure of commissioner to disqualify himself renders commission's action invalid. *Id.* Zoning commission's upgrading of residential zone invalid where chairman of commission who was owner of eight per cent of the land in area upgraded refused to disqualify himself and participated in decision of commission. 155 C. 497. The decision as to whether a particular interest is sufficient to disqualify a member is a factual one depending on the circumstances of the particular case. 157 C. 285. That chairman of zoning commission was chairman of town mental health fund and son of a member of the zoning appeals board had received psychiatric treatment at defendant institution did not disqualify either from reviewing application of defendant educational institution for emotionally maladjusted children. 158 C. 158. Where two members of commission had, prior to becoming members, signed petitions opposing applicant's request for zoning change but applicant's lawyer refused to challenge their qualifications at hearings, saying he would raise question on appeal if his client had unfavorable decision, decision was confirmed. 158 C. 497. Member of zoning commission did not have such personal or financial interest, either directly or indirectly, as would disqualify him under this section. 159 C. 585, 592-595. Permissible for municipal official who, by virtue of his office is an ex-officio member of board, to appear before zoning commission on matter as long as he represents municipality and not applicant. 160 C. 295. Member of the Granby Conservation Commission not unqualified to serve as zoning and planning commissioner for personal or financial interests conflict. 161 C. 182. Cited. 165 C. 185. The intent of this section is that a disinterested member or alternate attend a hearing and participate in the decision. 166 C. 207, 221. Where zoning authority's

action is held to be illegal, arbitrary or abuse of discretion, reviewing court cannot substitute own judgment of what authority's action should be unless as matter of law only one conclusion could reasonably be reached by the authority. 178 C. 198, 201 205. Cited. 196 C. 192, 202. Cited. 199 C. 231, 232. Cited. 209 C. 544, 557.

Cited. 2 CA 551, 555, 556, 560, 564. Cited. 26 CA 943. Cited. 43 CA 512.

Where board member had no personal or financial interest in application before board and plaintiff's attorney made no formal request at the hearing that he disqualify himself, facts do not justify his disqualification under this section. 26 CS 254. Where one of petitioners for zone change was personal accountant and professional advisor of commission member, latter should have disqualified himself. 26 CS 502. Court must expect commissioner's testimony that actions claimed by plaintiff did not, in their cumulative effect, constitute direct or indirect undue influence on commission members. 28 CS 426, 447. Statements and conduct of chairman of zoning commission at board's hearing, coupled with prior activities on his part, were such that he could be said to "represent" within meaning of this section opponents of plaintiff's application. M's appearance for board was violation of this section, and board's denial of variance sought by the plaintiff was thereby rendered illegal and invalid. 29 CS 32, 36 40, 41. Cited. 41 CS 196 200. Cited. 43 CS 373, 380 382.

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**Sec. 8-11a. Disqualification of board member as enforcement officer.** No person may serve as zoning enforcement officer in any municipality wherein he is a member of the zoning board of appeals.

(1963, P.A. 628.)

Cited. 186 C. 106, 112. Cited. 221 C. 374, 378.

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**Sec. 8-12. Procedure when regulations are violated.** If any building or structure has been erected, constructed, altered, converted or maintained, or any building, structure or land has been used, in violation of any provision of this chapter or of any bylaw, ordinance, rule or regulation made under authority conferred hereby, any official having jurisdiction, in addition to other remedies, may institute an action or proceeding to prevent such unlawful erection, construction, alteration, conversion, maintenance or use or to restrain, correct or abate such violation or to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. Such regulations shall be enforced by the officer or official board or authority designated therein, who shall be authorized to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under authority of the provisions of this chapter or, when the violation involves grading of land, the removal of earth or soil erosion and sediment control, to issue, in writing, a cease and desist order to be effective immediately. The owner or agent of any building or premises where a violation of any provision of such regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where such violation has been committed or exists, or the owner, agent, lessee or tenant of any part of the building or premises in which such violation has been committed or exists, or the agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists, shall be fined not less than ten nor more than one hundred dollars for

each day that such violation continues; but, if the offense is wilful, the person convicted thereof shall be fined not less than one hundred dollars nor more than two hundred and fifty dollars for each day that such violation continues, or imprisoned not more than ten days for each day such violation continues or both; and the Superior Court shall have jurisdiction of all such offenses, subject to appeal as in other cases. Any person who, having been served with an order to discontinue any such violation, fails to comply with such order within ten days after such service, or having been served with a cease and desist order with respect to a violation involving grading of land, removal of earth or soil erosion and sediment control, fails to comply with such order immediately, or continues to violate any provision of the regulations made under authority of the provisions of this chapter specified in such order shall be subject to a civil penalty not to exceed two thousand five hundred dollars, payable to the treasurer of the municipality. In any criminal prosecution under this section, the defendant may plead in abatement that such criminal prosecution is based on a zoning ordinance or regulation which is the subject of a civil action wherein one of the issues is the interpretation of such ordinance or regulations, and that the issues in the civil action are such that the prosecution would fail if the civil action results in an interpretation different from that claimed by the state in the criminal prosecution. If the court renders judgment for such municipality and finds that the violation was wilful, the court shall allow such municipality its costs, together with reasonable attorney's fees to be taxed by the court. The court before which such prosecution is pending may order such prosecution abated if it finds that the allegations of the plea are true.

(1949 Rev., S. 846; 1959, P.A. 28, S. 46; February, 1965, P.A. 109, S. 1; P.A. 73-434; P.A. 74-183, S. 181, 291; P.A. 76-436, S. 160, 681; P.A. 77-509, S. 7; P.A. 79-348; P.A. 87-244; 87-347.)

History: 1959 act changed jurisdiction of violations from local police court to circuit court; 1965 act added provisions concerning civil and criminal actions involving violation of one zoning regulation; P.A.

73-434 added provision allowing issuance of cease and desist orders for violations involving land grading or earth removal; P.A. 74-183 substituted court of common pleas for circuit court; P.A. 76-436 substituted superior court for court of common pleas, effective July 1, 1978; P.A. 77-509 made no change; P.A. 79-348 increased civil penalty for violation of order from two hundred fifty to five hundred dollars and added provision re costs and attorneys' fees; P.A. 87-244 authorized soil erosion and sediment control orders to be effective immediately; P.A. 87-347 changed amount of civil penalty from five hundred dollars to an amount not to exceed two thousand five hundred dollars.

Cited. 135 C. 423. Plea in abatement overruled where town named as plaintiff as no substantive rights affected. 146 C. 178. Structural alterations on nonconforming use change building into substantially different structure adapted to an extension of the nonconforming use. *Id.* Cited. 150 C. 439. When ordinance requires approval for extension of nonconforming use, extension without approval is prohibited. 150 C. 584. Judgment denying plaintiff injunctive relief based on unsound proposition of law set aside. 155 C. 431. Cited. 165 C. 185. Measure of damages for breach of contract and warranty deed in that house was constructed in violation of zoning regulations; ripening of use under section 8-13a after breach does not affect damages. 170 C. 177. Cited. 180 C. 575, 577. Cited. 181 C. 556, 557. Cited. 186 C. 106, 112, 113. Cited. 199 C. 575, 579. Cited. 208 C. 1, 7; *Id.*, 696, 700. Cited. 221 C. 374, 378, 379. Cited. 225 C. 575, 576. 578, 582. 583, 587, 588, 591 594. Cited. 230 C. 622, 624, 627, 631. 637. Cited. 232 C. 122, 148. Cited. 239 C. 515.

Held to be unnecessary for zoning enforcement officer to allege and prove irreparable harm and lack of an adequate legal remedy in order for injunction to issue. 1 CA 176, 177, 179, 182. Cited. *Id.*, 285, 286. Cited. 2 CA 515, 521. Cited. 4 CA 252, 254, 257. Application of prior pending action rule to bar action under this section is neither equitable or just where prior action was brought under Sec. 8-6. 9 CA 534 537. Cited. 10 CA 41 43. Cited. *Id.*, 190, 197. Cited. 15 CA 550, 558, 559. Cited. 17 CA 17, 21, 23, 25.

30; judgment reversed, see 212 C. 570 et seq. Cited. Id., 344, 350, 351. Cited. 19 CA 208. Cited. 28 CA 379, 387. Cited. 41 CA 89, 91, 93, 99, 110, 113. Cited. 46 CA 5.

In criminal action for alleged violation of order of zoning board of appeals, accused must be charged with violation of provision of ordinance, not merely order of board. 6 CS 375. Board's power to institute legal proceedings held to include right to engage counsel. 12 CS 192. Cited. 15 CS 485. Where two permits for "all liquor package store" were issued by liquor control commission in violation of 1500 foot requirement of local ordinance, injunction against one permittee on action brought by building inspector refused. 16 CS 349. Appeal under section 8-7 stays all proceedings in action appealed from including criminal proceedings provided for in this section. 23 CS 125. Information which didn't specify crime or section of zoning ordinance held defective. Court could not take judicial notice of ordinance or of order of building inspector which defendant was charged with violating. Id. Allows for injunctive relief where fines provided by law would not deter violation. 29 CS 62. Cited. 34 CS 69. Cited. 39 CS 334, 336, 337. School dormitory has educational purpose and is itself a school, rather than an accessory use, within zoning ordinance. 2 Cir. Ct. 294.

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**Sec. 8-12a. Establishment of municipal penalties for violations of regulations.** (a) Any municipality may, by ordinance adopted by its legislative body, establish penalties for violations of zoning regulations adopted under section 8-2 or by special act. The ordinance shall establish the types of violations for which a citation may be issued and the amount of any fine to be imposed thereby and shall specify the time period for uncontested payment of fines for any alleged violation under any such regulation. No fine imposed under the authority of this section may exceed one hundred fifty dollars for a single citation.

Any fine shall be payable to the treasurer of the municipality.

(b) The hearing procedure for any citation issued pursuant to this section shall be in accordance with section 7-152c except that no zoning enforcement officer, building inspector or employee of the municipal body exercising zoning authority may be appointed to be a hearing officer.

(c) Any zoning enforcement officer who issues a citation pursuant to an ordinance adopted under this section shall be liable for treble damages in any civil action if the court finds that such citation was issued frivolously or without probable cause.

(P. A. 91-398, S. 6, 7; P.A. 92-180; P.A. 93-435, S. 90, 95; P.A. 96-210.)

History: P.A. 92-180 amended Subsec. (a) to include violations of zoning regulations adopted "by special act"; P.A. 93-435 amended the section by deleting Subsec. (d), which had terminated provisions of section as of October 1, 1993, effective June 28, 1993; P.A. 96-210 amended Subsec. (a) by deleting phrase "concerning primary uses and buildings and structures which pose an immediate and substantive threat to public safety" modifying "special act".

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**Sec. 8-13. Controlling requirement in case of variation.** If the regulations made under authority of the provisions of this chapter require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required in any other statute, bylaw, ordinance or regulation, the provisions of the regulations made under the provisions of this chapter shall govern. If the provisions of any other statute, bylaw, ordinance or regulation require a greater width or size of yards, courts or

other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required by the regulations made under authority of the provisions of this chapter, the provisions of such statute, bylaw, ordinance or regulation shall govern.

(1949 Rev., S. 847.)

Cited. 165 C. 185.

Cited. 15 CA 550, 560.

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**Sec. 8-13a. Nonconforming buildings and land uses.** (a) When a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot or when a building is situated on a lot that violates a zoning regulation of a municipality which prescribes the minimum area of the lot, and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building shall be deemed a nonconforming building in relation to such boundaries or to the area of such lot, as the case may be.

(b) When a use of land or building (1) is on a parcel that is fifteen or more acres, (2) is included in industry numbers 1795, 2951, 3272 or 4953 of the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, (3) is not permitted by the zoning regulations of a municipality, (4) has been established and continued in reasonable reliance on the actions of the municipality, and (5) has been in existence for twenty years prior to July 8, 1997, without the institution of court action to enforce the regulations regarding the use, such use shall be deemed a legally existing nonconforming use and may be continued. Nothing in this subsection shall be construed to exempt such use from the requirements of the general statutes or of any other municipal ordinance.

(1967, P.A. 896; 1971, P.A. 388; P.A. 77-509, S. 8; P.A. 91-199; P.A. 97-296, S. 3, 4.)

History: 1971 act changed period after which nonconforming use established from five to three years; P.A. 77-509 substituted "such building shall be deemed a nonconforming building ..." for "such building location shall be deemed a nonconforming use"; P.A. 91-199 included as a nonconforming building a building situated on a lot that violates a zoning regulation which prescribes the minimum area of the lot; P.A. 97-296 added new Subsec. (b) re nonconforming land use, effective July 8, 1997.

Since damages for breach of contract are measured as of date of breach, subsequent ripening of use under this section does not affect damages. 170 C. 177.

Cited. 46 CA 148.

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ARTICLE II            ZONING USES

ARTICLE II            Section 20        ELDERLY HOUSING DEVELOPMENT (EHD) ZONE<sup>1</sup>

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20.01            The EHD zone is intended to permit a range of housing types for the elderly, either separately or in combination, on a single site or adjoining sites to meet the housing, service and health care needs of seniors.

20.02            Permitted Uses

The entire site shall be devoted to elderly housing, which should encompass the following uses permitted separately or in combination on a site:

(a) Elderly deed restricted independent living in accordance with all applicable provisions of Article II, Section 7.

(b<sup>2</sup>) Multi-family elderly housing:

Specially planned, designed, and managed multi-unit rental housing designed for independent living and providing limited common areas for the use of the residents.

(c) Congregate Housing:

Specially planned, designed, and managed multi-unit rental housing designed to provide supportive environments but also to accommodate a relatively independent lifestyle. A limited number of support services, such as meals, laundry, housekeeping, transportation, and social and recreational activities, may be provided.

(d) Assisted Living Facility:

A managed residential community which provides private residential units and nursing, housekeeping and maintenance services, security, on site management, three meals daily, and laundry service for residents, intended to assist residents with activities of daily living while maintaining a maximum level of independence.

(e) Continuing Care Retirement Community:

A housing development that is planned, designed, and operated to provide a full range of accommodations and services for older adults, including independent living, congregate housing, assisted living, and nursing facility.

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<sup>1</sup> Adopted 04/20/98, effective 05/12/98

<sup>2</sup> Amended 06/19/2006, effective 07/08/06

(f) Nursing Facility:

A facility providing a full range of 24-hour direct medical, nursing, and other health services. Registered nurses, licensed practical nurses, and nurses aides provide services prescribed by a resident's physician. Nursing care and restorative physical, occupational, speech, and respiratory therapies may also be provided.

(g) Apartment, duplex-housing, single family detached housing, rowhouses/ townhouses and group dwellings shall be permitted building types in the EHD zone.

(h) The following accessory uses may be permitted to provide services and facilities on site for the residents but are not intended for use by the general public except for adult and child day care facilities:

1. Convenience retail shop with maximum of 1,000 square feet of floor area for the sale of food items, prescription and/or nonprescription drugs, household items and gifts for the use of the occupants.
2. Health and therapeutic care facilities primarily for use by the occupants.
3. Library, game room, greenhouse or other recreation facilities, both indoor and outdoor.
4. Automobile parking, garages, and carports.
5. Maintenance buildings.
6. Signs.
7. Radio and television antennae.
8. Storage buildings for use of residents.
9. Adult day care may be developed at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV, Section 18.
10. Child daycare center may be developed at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV, Section 10.
11. Central service buildings or facilities for providing medical, social, health or personal services, or administrative and management functions.

20.03 Elderly housing development is permitted in an EHD zone provided the Planning and Zoning Commission, after a public hearing, finds that the following standards and criteria have been met:

- (a) Public water and sanitary sewer systems must be provided for the development.
- (b) Except for elderly deed restricted housing, public transportation or adequate municipally provided transportation specifically for and used by the elderly must be available to the site. This requirement may be waived provided the applicant submits satisfactory evidence of sufficient commitment to provide convenient transportation as a service to the residents of the facility. Transportation must provide service to facilities including but not limited to shopping, personal care establishments, health care establishments or practices, adult day care and places of worship.
- (c) Residency requirements shall be imposed by the developer and run with the land limiting the occupancy of elderly housing units as follows:
  1. All congregate housing and assisted living units shall be occupied by persons at least 62 years of age who desire or require residential accommodations or support services. For double occupancy at least one occupant must be age 62 and the other at least age 50. A unit may be occupied by the surviving member of a household, regardless of age, if the other household member at the time of death met the age requirements for occupancy.<sup>3</sup>
  2. Elderly deed restricted independent living units shall be occupied by at least one person 55 years of age or older. A unit may be occupied by the surviving member of a household, regardless of age, if the other household member at the time of death met the age requirements for occupancy.<sup>4</sup>
  3. Multi-family elderly housing shall be occupied by persons at least 62 years of age or older. A unit may be occupied by the surviving member of a household, regardless of age, if the other household member at the time of death met the age requirements for occupancy.<sup>5</sup>
- (d) Reasonable traffic circulation exists to and from the site taking into consideration roadway capacities and level of service, access to parking and access to the site by emergency or other public safety vehicles.

<sup>3</sup> Amended 06/19/2006, effective 07/08/06

<sup>4</sup> Amended 06/19/2006, effective 07/08/06

<sup>5</sup> Amended 06/19/2006, effective 07/08/06

- (e) The proposed housing development shall be reasonably compatible in scale and character with the neighborhood for which it is proposed and shall not adversely affect adjacent properties.

20.04 Site Development

20.04.01 Site and development requirements

- (a) Minimum site area shall be two acres excluding wetlands, except for the CBD or Historic zone where there shall be no minimum lot size.
- (b) The maximum number of multi-family elderly units or congregate units shall not exceed 15 units per acre, for assisted living shall not exceed 20 units per acres, and for nursing facility shall not exceed 25 beds per acre.<sup>6</sup> Density calculations shall be based on total site acreage excluding wetlands and slopes exceeding 15%. This provision shall not apply to CBD and Historic zone sites when existing buildings are converted to elderly housing.
- (c) For all housing types except single family and duplex independent living the following site development standards must be met:
  - 1. Each site shall contain at least thirty percent (30%) of the total lot area as permanent open space, which shall not include land devoted to streets or parking areas, but may include land within the minimum setback areas required herein if approved by the Commission. This provision shall not apply to CBD and Historic zone sites when existing buildings are converted to elderly housing.
  - 2. Included within the open space requirement above, the Commission shall require the development of outside recreation areas suitable to serve the occupants. Such recreation area shall contain at least 150 square feet of lot area for each unit proposed with a minimum of 6,000 square feet of landscaping providing benches, paved walkways, site lighting and beneficial views, shielded from heavy traffic. In the CBD and Historic zones the Commission can approve a combination of indoor and outdoor recreation space to meet this requirement.
  - 3. All utilities shall be underground.
  - 4. All outside utilities and mechanical areas shall be fenced and screened from view by suitable shrubbery and/or construction of a closed picket or screen-type fence or other approved enclosure. All dumpsters are to be

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<sup>6</sup> Amended 06/19/2006, effective 07/08/06

located on a concrete pad and enclosed with a privacy structure at least the height of the dumpster.

5. Buildings shall be residential in appearance and sensitive to surrounding properties. No wing of the building shall exceed a length of three hundred (300) feet, no wall of the building shall exceed one hundred (100) feet in length in an unbroken plane without an offset of at least three (3) feet. Buildings should be compatible in scale with surrounding buildings but shall not exceed forty (40) feet in height. Building coverage shall not exceed thirty percent (30%) of total lot area. This provision shall not apply to CBD and Historic zone sites when existing buildings are converted to elderly housing.
6. Maintenance and storage sheds or similar accessory buildings are permitted when clearly incidental to the principal building and when they do not distract from neighboring property. No accessory building shall exceed eighteen (18) feet in height or be located within any minimum setback areas.
7. Exterior illumination shall be provided where necessary for safe lighting of buildings, walkways, parking areas and driveways. All such lighting shall be subject to the approval of the Commission and be so located and of such design as to prevent direct light rays from extending beyond any point of the boundaries of the property.

20.04.02 Setback requirements: This provision shall not apply to CBD and Historic zone sites when existing buildings are converted to elderly housing.

- (a) Minimum frontage - 60 feet.
- (b) No building or structure shall be built within 30 feet of the property line of the site, or a distance equal to the height of the building or structure, whichever is greater.
- (c) Minimum front yard: 60 feet.
- (d) The minimum space between buildings shall be:
  1. 50 feet where both facing walls contain a window(s).
  2. 30 feet where only one of the facing walls contain a window(s).
  3. 15 feet where neither facing wall contains a window.

20.04.03 Minimum Parking requirements:

- (a) Automobile parking spaces for congregate housing shall be provided on the site at a ratio of 1.25 parking spaces for every two residential units plus one for every five units for visitors, plus one additional parking space for each employee on the largest shift.
- (b) Parking for assisted living facilities shall be provided on the site at a ratio of .5 space per unit plus one for each employee on the largest shift.
- (c) Parking for nursing facilities shall be provided on the site at a ratio of one space for each three beds.
- (d) Parking for continuing care retirement communities shall be provided to meet the above ratios, unless the Commission finds that shared parking arrangements can meet the needs of the various elderly housing types on the site.
- (e)<sup>7</sup> Automobile parking spaces for multi-family elderly units shall be provided at a ratio of one (1) space per unit, plus one additional parking space for each employee on the largest shift, plus one for every five units for visitors.
- (f) Automobile parking spaces for accessory uses shall be as required for each specific use in Article IV, Section 9.03. Adequate parking space for other accessory facilities shall be provided at the discretion of the Commission.
- (g) Parking area design and construction shall be in accordance with the provisions set forth in Article IV, Section 9.02. The circulation system shall provide for safe and convenient passenger boarding on and off of mass transit or public transit vehicles.

20.05 Building Design Criteria

- (a) Residential unit minimum floor area

The minimum floor area of residential units exclusive of public hallways and corridors shall be:

	<u>Congregate Housing</u>	<u>Assisted Living</u>
Efficiency Unit	400 square feet	345 square feet
Efficiency Unit with no cooking facility	N/A	325 square feet

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<sup>7</sup> Amended 06/19/2006, effective 07/08/06

	<u>Congregate Housing</u>	<u>Assisted Living</u>
One Bedroom Unit	500 square feet	475 square feet
Two Bedroom Unit	600 square feet	575 square feet

For residential units with communal kitchen/dining facilities on the site, the minimum floor area for each type units may be reduced 5% subject to approval of the Commission.

20.05.01 Fire hazard precaution

- (a) Fire hydrants shall be installed so that no portion of a building is more than 250 feet from a hydrant or installed in accordance with requirements of the cognizant fire chief.
- (b) Fire lanes shall be provided as required by the fire marshal. The applicant shall indicate on the plan the location of such lanes and shall provide all fire lane signs and pavement markings as required.

20.05.02 Site drainage

- (a) The site shall be adequately drained to carry off storm water. The storm water drainage system shall be approved by the town engineer.
- (b) Roof drainage pipes shall not discharge onto or across sidewalks, driveways, roadways or parking areas.

20.05.03 Roadways and driveways<sup>8</sup>

- (a) All roadways and driveways shall be:
  1. designed to facilitate traffic circulation and emergency vehicle movement, including the provision of cul-de-sacs at all dead end driveways and roadways constructed in accordance with the "Public Improvement Standards";
  2. approved by the fire chief having jurisdiction and the local traffic authority;
  3. interconnected where possible on sites with only one vehicular point of entry.

<sup>8</sup> Rev. 10/04/06, effective 10/25/06

- (b) All roadways which are proposed to become town-owned streets shall be constructed in accordance with the "Public Improvement Standards"<sup>9</sup>. Roadways shown in the town's Plan of Development which are on the site shall be shown and constructed to the appropriate town standards based upon the classification for said roadways in the Plan of Development.<sup>10</sup>
- (c) All roadway and driveways designed for vehicular traffic shall have the following minimum requirements:
  - 1. Two-way traffic 24 foot width
  - 2. One-way traffic 16 foot width
  - 3. One-way traffic with 45 degree parking on one side 16 foot width
  - 4. One-way traffic with 60 degree parking on one side 18 foot width
  - 5. One-way traffic with 90 degree parking on one side or with parking on both sides 24 foot width
  - 6. Inside turning radius 30 feet
  - 7. No parking within these minimum widths or radii shall be permitted

20.05.04 Sidewalks and Pedestrian Paths<sup>11</sup>

- (a) Sidewalks shall be provided on at least one side of all roadways and private driveways to provide a continuous pedestrian network. Sidewalks must be 5' wide and constructed of cement concrete unless an alternative surface is approved by the Commission. The Commission may require sidewalks on both sides of the roadways if it is deemed necessary for public safety.
- (b) Pedestrian paths are encouraged as an amenity to residents in conjunction with passive recreation areas, or to connect recreation or open space areas, or to provide additional recreational opportunities for residents. The provision of pedestrian paths to provide supplemental circulation options internal to the site does not replace the requirement for provision of sidewalks.
- (c) The Commission may waive the requirement for sidewalks if the configuration of the site is such that public safety concerns and pedestrian circulation needs are better met in a clearly proposed alternative manner.

20.05.05 Landscaping

The development shall be landscaped to preserve or develop natural vegetation for beauty, recreation, screening and shade. There shall be provided a landscaped border of not less than 15 feet in width adjacent to and parallel to all sides of the site except points of entry. The landscaped border shall be appropriately planted

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<sup>9</sup> Rev. 03/17/97, effective 04/01/97

<sup>10</sup> Rev. 10/02/89

<sup>11</sup> Rev. 10/04/06, effective 10/25/06



with a mixture of evergreen and deciduous trees and shrubs in such a manner as to develop a natural screen. The Commission may waive this requirement if it finds that existing foliage or natural conditions are sufficient to provide the landscaping intent of this requirement or for borders that abut public streets.<sup>12</sup>

All landscaping elements included on the approved landscaping plan shall be maintained in a manner sufficient to ensure its continuing performance and the survival of all plantings.

20.06 Application Procedure

20.06.01 The applicant shall file with the application for a change of zone, a preliminary plan of development for all of the property located within the proposed EHD zone.<sup>13</sup>

Applicants may submit the final development plans at the time of application for a zone change. In instances of a combined preliminary and final plan submission the applicant can request a waiver from the PZC to eliminate duplicative application requirements. When the elderly housing development is proposed in a CBD or Historic zone a waiver can be requested for duplicative provisions in these zones as well.

The Commission shall hold a public hearing on the preliminary plan together with the zone change application as provided by the Connecticut General Statutes. The Commission may approve, deny, or modify and approve the preliminary plan of development together with the zone change application. Approval of the application shall establish an EHD zone and a preliminary development plan shall permit the applicant and/or successors or assigns to proceed with submission of final development plans for development as set forth in the preliminary plan subject to the provisions of these regulations, the subdivision regulations and the Town of Manchester Public Improvement Standards as applicable.

20.06.02 The preliminary plan shall be schematic and shall consist of one or more maps at a scale of not less than 1" = 100', prepared by a registered professional engineer, a registered architect, or registered landscape architect and accompanying documents in sufficient detail to indicate:

- (a) Existing topography with five foot contours, existing structures, existing roads and rights-of-way, boundary description of the site, and major topographic features (including wooded and open areas, slopes greater than 15%, and inland wetlands and watercourses).

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<sup>12</sup> Amended 06/19/2006, effective 07/08/06

<sup>13</sup> Rev. 11/03/03, effective 11/28/03

- (b) The location of all proposed vehicular and pedestrian systems (including location of driveways, public roads, sidewalks, pedestrian paths<sup>14</sup> and parking areas), proposed open space and recreation areas and proposals for connection of roads and driveways within the site to the existing public and private road system. A report shall be included regarding existing traffic conditions and information on traffic generated by development of the proposed plan and its impact on the roadway system.
- (c) The proposed location of all buildings within the site and areas proposed for subdivided lots.
- (d) The proposed general system of utilities including domestic water supply, fire protection, storm water drainage, and sanitary sewer. A statement of the projected impact on town water supply, drainage and sanitary sewer systems. The proposed location of major storm drainage culverts and drainage basins serving the site shall be indicated. A storm water management plan as required by the Public Improvement Standards shall also be submitted.
- (e) A table of ratios indicating the proposed and permitted/required number of dwelling units, indicating the type of unit and the floor area of the units and buildings, parking and floor area ratios and typical building floor plans.
- (f) A general description of conservation measures to be utilized in development of the site to minimize erosion and sedimentation.
- (g) Where development within the site is to be in phases or units, the anticipated location and acreage of such phases or units.
- (h) Building elevations, including materials, and perspectives showing the architecture of the proposed building(s) and the physical relationship to the surrounding properties to demonstrate design compatibility.
- (i) Such other relevant information as the applicant may wish to submit or the Commission may require.

20.06.03 Final Plans of Development shall be approved by the Commission prior to the issuance of a building permit. Such plans shall be in conformance with the approved Preliminary Plan of Development, these regulations, the Subdivision Regulations if applicable, and the Public Improvement Standards. An application for approval of a Final Plan of Development shall include the following plans prepared by a professional engineer, architect or landscape architect licensed to prepare the required plans:

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<sup>14</sup> Rev. 10/04/06, effective 10/25/06

- (a)<sup>15</sup> Site Information and Engineering Plan and Profiles - a plan having a scale of not less than 1" = 40' showing:
1. An accurate description of the site prepared by a registered land surveyor.
  2. Existing topographic and geographic features including contour lines at five-foot intervals.
  3. Existing structures and easements.
  4. Proposed grading and contours at two foot intervals.
  5. Proposed storm water drainage design and details.
  6. Sanitary sewer and water mains and services indicating size, material and connection points to existing systems.
  7. Hydrant locations, existing and proposed.
  8. Roadway and driveway locations and details.
  9. Site lighting locations, pole heights and fixture details.
- (b) Location Plan - a plan having a scale of not less than 1" = 40', showing:
1. Location of all principal buildings and accessory structures.
  2. Roadway and driveway layout with proposed names.
  3. Location of all proposed sidewalks and pedestrian paths.<sup>16</sup>
  - 4.<sup>16</sup> Vehicle parking areas with number of spaces.
  - 5.<sup>16</sup> Landscaping with plant types, sizes and quantities.
  - 6.<sup>16</sup> A table of ratios indicating the proposed and permitted/required number of dwelling units or nursing home beds, (indicating the type of unit and the floor area of the units and buildings) parking, floor area ratios, distance between buildings and lot line, and the distance between buildings.

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<sup>15</sup> Rev. 11/03/03, effective 11/28/03

<sup>16</sup> Rev. 10/04/06, effective 10/25/06

- 7.<sup>16</sup> Proposed outdoor recreation and open space areas and outdoor recreation facilities.

(c)<sup>17</sup> Building Plan

A plan showing:

1. Floor plan for each type of living unit calling out floor areas in square feet.
  2. Exterior building elevations identifying the building finish materials and colors.
  3. Table showing the number of units per building and the number of bedrooms per unit.
  4. Building detail plans shall include floor plans which clearly differentiate between private and semi-private spaces and residential and communal facilities/service areas drawn to scale and dimension.
- (d) Affidavits stating the developer shall impose and enforce the required age restrictions for occupancy in the project and listing all services which will be provided to the occupants, and such restrictions shall be filed on the land records before a building permit is issued, and shall run with the land.
- (e) A statement concerning the availability of public transportation or municipally operated transportation specifically intended for use by the occupants, or a statement, including probable schedules and eligible destination for such services. When the developer is providing transportation services for occupants the same information shall be provided.

20.07 Bonding Requirement

Bonding for the cost of materials and installation of all landscaping and public improvements shall be provided. Acceptable bonding for the transportation services provided shall also be required. All bonds must be secured and accepted by the Town prior to issuance of a Certificate of Occupancy.

20.08 Control of Issue of Certificates of Occupancy

The issue of Certificates of Occupancy shall be limited to 80% of the dwelling units or nursing home beds contained in the project until:

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<sup>17</sup> Rev. 11/03/03, effective 11/28/03

- (a) All public improvements and landscaping covered by the bond have been completed to the satisfaction of the director of public works.
- (b) As built plans of utilities and public improvements within the development, certified by a registered professional engineer, have been received and accepted by the director of public works.
- (c) All recreational facilities shown on the approved Detail Plan of Development are installed.

20.09 Use Variances

Use variances shall not be granted for any use in or on an elderly housing site.

20.10 Changes to Plans

20.10.01 Any proposed change to an approved preliminary development plan which would change the elderly housing type, building type, unit mix, building locations, or parking and circulation plans shall not be permitted unless such plans are approved after a public hearing is held by the Planning and Zoning Commission. Applications to the Commission for such changes shall follow the requirements set forth in Section 20.06.02 and, if applicable, Section 20.06.03 of this section.

20.10.02 Minor changes in an approved site development plan may be made with the concurrence of the chairman of the Planning and Zoning Commission and the Director of Neighborhood Services and Economic Development, provided such changes shall in no way affect the overall layout, design or density, of the site development plan. Such minor changes may include, but are not limited to, the relocation of sidewalks, driveways, and other such physical improvements due to unforeseen topographical or surface or subsurface geological features; siting and screening of trash disposal and mechanical facilities; slight alterations of finished contours; minor rearrangement of lighting fixtures, benches, and other incidental street furniture. A letter or narrative describing and justifying the need for the minor changes and plans calling out the minor changes must be provided for consideration by the chairman and director. Following approval of a minor revision, the applicant shall submit within ten days one Mylar copy and four paper copies, signed and sealed by the design professional, of the amended plan. Any changes in an approved site development plan which is not considered to be a minor change by the chairman or director shall be processed as a formal amendment to the approved site development plan and shall require the preparation of amended plans and the approval of the Commission.<sup>18</sup>

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<sup>18</sup> Rev. 11/03/03, effective 11/28/03

Alterations of building materials or colors, additions of signs or lighting, reduction of parking, reduction of landscaping and similar alterations to an approved plan will require site plan modification approval from the full Commission.

20.11 Repealed Uses

Convalescent homes, nursing homes, handicapped housing or elderly congregate housing developed or approved in accordance with the Manchester zoning regulations prior to April 1, 1998 shall be lawfully existing, legal and conforming uses.

ARTICLE II            ZONING USES

ARTICLE II<sup>1</sup>            Section 21<sup>2</sup>    PROHIBITED USES

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- 21.01            The following uses of land and buildings are prohibited in any zone whether on public or private land:
- 21.01.01<sup>3</sup>        Parking of trailers for more than 24 hours when used for human occupancy, provided however, in the event that any dwelling unit is destroyed or rendered uninhabitable by reason of fire, flood or other casualty, the zoning enforcement officer may grant a permit for the use of trailers as emergency shelters for a period not exceeding 60 days. This period may be renewed by the zoning enforcement officer for two additional 30-day periods.
- 21.01.02        Commercial slaughter house, but the slaughter of livestock and poultry is permitted as an accessory use on farms in Rural Residence zone.
- 21.01.03        Rooming houses
- 21.01.04        Building or premises used for military training or drilling, with or without arms, unless such premises shall be declared by the chief of police to be safe and appropriate for such purpose.
- 21.01.05        No building to be used as a dwelling or apartment house shall be constructed or altered in the rear of, or moved to the rear of, a building situated on the same lot. No building shall be constructed or structurally altered in the front of, or moved to the front of, a dwelling situated on the same lot. These provisions shall not prevent the erection and occupancy of approved group dwellings.
- 21.01.06        Outdoor drive-in theaters.

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<sup>1</sup> Rev 08/16/82

<sup>2</sup> Rev 04/20/98, effective 05/12/98

<sup>3</sup> Rev 09/28/81

ARTICLE II            ZONING USES

ARTICLE II            Section 22        SPECIAL DESIGN COMMERCIAL BUSINESS ZONE<sup>1</sup>

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22.00            Purpose

The Special Design Commercial Business Zone is intended to provide retail, service, and professional office uses in locations close to limited access highways or on collector or arterial roads in a manner which ensures public safety and compatibility with surrounding uses. It is also intended to enhance the quality of new development or redevelopment and when appropriate preserve and enhance the special character of existing neighborhoods.

22.01            Applicability

The provisions of this section shall apply to all development on vacant lots, all changes of use from residential to nonresidential uses, and any changes to an existing building or site which increase the size of the developed area of either the building or the site, or add landscape features to the site.

22.02            Permitted Uses

Site development plan approval subject to the provisions of this section shall be required for the following uses:

- 22.02.01        Retail trade establishments which do not exceed 2,000 square feet either individually or in combination with other uses on a site.
- 22.02.02        Personal Service establishments which do not exceed 2,000 square feet either individually or in combination with other uses on a site.
- 22.02.03        Professional and medical offices and business service establishments which do not exceed 5,000 square feet either individually or in combination with other uses on a site.
- 22.02.04        Restaurants with indoor seating only and restricted to food consumed inside the premises which do not exceed 3,000 square feet of customer service area.
- 22.02.05        Municipal and public utility buildings and structures.
- 22.02.06<sup>2</sup>        Alcoholic liquor sales in establishments which individually or in combination with other uses do not exceed 2,000 square feet on a site, and in accordance with the provisions of Article IV Section 8 of these regulations.

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<sup>1</sup> New: effective 06/25/99

<sup>2</sup> Rev. 05/15/00, effective 06/03/00



22.03      Special Exception Uses

22.03.01      Certain uses are deemed appropriate in this zone but not at every or any location therein, or without restrictions or conditions being imposed by reason of special problems of use. Such uses and their required site development plans shall require approval by the Commission after a public hearing. Site development shall be in accordance with these regulations and with Article IV Section 20.

22.04      Special Exception Uses

22.04.01      Retail trade establishments which individually or in combination with other uses exceed 2,000 square feet on a site.

22.04.02      Personal service business which individually or in combination with other uses exceed 2,000 square feet on a site.

22.04.03      Professional and medical offices which individually or in combination with other uses exceed 5,000 square feet on a site.

22.04.04      Restaurants where food prepared in the building may be sold for take out and consumption off premises or any restaurant which exceeds 3,000 square feet of customer service area.

22.04.05      Any permitted or special exception use which serves customers from drive-through windows.

22.04.06<sup>3</sup>      Alcoholic liquor sales in establishments which individually or in combination with other uses exceed 2,000 square feet on a site and in accordance with the provisions of Article IV Section 8 of these regulations.

22.05      Site Development Criteria

- (a) All business, servicing or processing (except for off-street parking/loading and outdoor seating areas at restaurants)<sup>4</sup> shall be conducted within completely enclosed buildings.
- (b) Architectural scale should be similar to the scale of the surrounding existing development, including building height. Architectural design, including roof design, should be compatible with surrounding architectural design.
- (c) Outdoor storage is prohibited.

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<sup>3</sup> Rev 05/15/00, effective 06/03/00

<sup>4</sup> Rev 05/15/00, effective 06/03/00

- (d) Delivery receiving areas shall be screened from the street. All delivery receiving areas shall be designed as an integral part of the building and not detract from the appearance of the building and site.
- (e) Site lighting shall be hooded to control objectionable and/or hazardous glare off the premises. No site lighting shall project a beam of light other than at a sign. Pedestrian systems designed for the movement of people between buildings and from buildings to parking shall be lighted to provide safety and security.
- (f) The Commission may require an applicant to provide reasonable and necessary traffic and pedestrian circulation improvements, sewerage, storm drainage facilities and other improvements including land and easements, located off-site of the property limits but necessitated or required by the development. Necessary improvements are those clearly and substantially related to the subject development.
- (g) Electric power, telephone, and other cable systems shall be placed underground; except that existing electric power and telephone/cable system facilities may be used where appropriate. This provision may be waived by the Commission only where the utility company has determined that safe underground installation is not feasible because of soil or water conditions or other natural or man-made conditions.
- (h) Landscaping:
  - (1) Street trees at a minimum rate of one tree for every 50 feet or part thereof of street frontage shall be provided in all yard areas abutting public streets to provide shade and visual interest. Street trees, whether deciduous shade trees, flowering trees or evergreen trees, shall be a minimum of three inch caliper measured at 3½ feet above ground, and selected for hardiness and appropriateness of use and soil conditions. Trees may be planted at intervals and/or in groups to assure the desired effect is achieved subject to the approval of the Commission.
  - (2) Buffer yards of sufficient width and with adequate landscaping treatment to screen existing abutting residential uses or residentially zoned property from nonresidential uses shall be provided. Landscaping shall screen residential uses from visual intrusion of other uses, mitigate noise generated from other uses, and provide separation between residential and nonresidential uses. Buffer yards shall be 25 feet wide but they may be widened or narrowed in accordance with the Illustration One: Buffer Yards and Berms, in Article II, Section 8 of these regulations subject to the approval of the Commission and depending upon the site characteristics.

- (3) All accessory uses, such as utility structures, dumpsters, storage facilities, loading or parking areas or similar uses shall be screened to minimize visual intrusion or landscaped to integrate these elements into the site development plan.
- (4) In order to meet the above requirements, landscaping elements may include, but are not limited to, a variety and combination of trees, shrubs, ground cover, earthworks (mounding, grading, etc.), pavement materials, fountains, ponds, flower beds, street furniture, lighting, walls and fences.
- (i) The site plan shall provide safe and convenient vehicular access from arterial or collector roads, and a pedestrian system shall provide safe and convenient access inside the site between buildings and uses and to and from the site and abutting pedestrian systems.

Driveways shall be kept to a minimum to manage access and reduce turning movement conflicts and facilitate traffic flows. Shared driveways between parcels are encouraged.

- (j) Drive through windows shall be located only on one side of the proposed building and shall be positioned to minimize conflicts with doorways and pedestrians.

22.06 Height and Area

The height and area limitation for uses shall be:

Minimum Front Yard	50 feet
Minimum Side Yard	15 feet
Minimum Rear Yard	30 feet
Maximum Height	40 feet

Because this zone applies to properties in various locations in the community, the Commission requires flexibility to ensure the purpose of the regulation is met. The Commission may modify the minimum requirements in order to ensure compatibility with the neighborhood surrounding the proposed development and reinforce the existing street line, building spacing, and building placement established by the existing development abutting the site.

Front yard dimensions shall be the same as the greatest existing front yard dimension on abutting properties unless a lesser yard is approved by the Commission. Side and rear yard dimensions shall be the same as the side and rear yard dimensions on abutting properties unless a lesser yard is approved or a greater yard is required by the Commission.

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22.07      Application Procedure

All petitions for site plan approval shall include plans and information sufficient to show compliance with the requirements set forth in this section and shall include the following:

- (a) Site Information and Engineering Plan - Seven (7) copies of a plan having a scale of not less than 1" = 40' showing:
1. an accurate boundary description of the site prepared by a registered land surveyor;
  2. existing topographic and geographic features including contour lines at five foot intervals;
  3. major topographic features (including wooded and open areas, slopes greater than 15%, and inland wetlands and watercourses).
  4. existing structures, easements, roads and rights-of-way;
  5. proposed grading and contours at two foot intervals;
  6. proposed storm water drainage design and details;
  7. public sanitary sewer and water service including connection points to existing systems and plans and profiles at 1" = 40' horizontal and 1" = 4' vertical;
  8. hydrant locations;
  9. trash collection facilities; and
  10. roadway, driveway, pedestrian walkway, and parking area locations and details. Plans should show connection of roads and driveways within the site to the existing public road system and with abutting property.
- (b) Location Plan - seven (7) copies of a plan having a scale of not less than 1" = 40', showing:
1. location of all principal buildings and accessory structures;
  2. roadway and driveway layout with proposed names;
  3. vehicle parking areas with number of spaces;
  4. landscaping with plant types, sizes and quantities; and
  5. a table of ratios indicating parking, floor area ratios, distance between buildings and lot lines, the distance between buildings, building heights, total landscaped area and parking lot landscaped area.
- (c) Building Plan - seven (7) copies of a plan indicating:
1. floor plan for each building;
  2. exterior building elevations showing the building finish materials and colors.
  3. table indicating building height and roof style of all buildings on abutting properties.

- (d) A report shall be included regarding existing traffic conditions and information on traffic generated by development of the proposed plan and impacts on the road system. For drive through facilities traffic impact analyses shall describe peak hours of operation, volume of customers per hour, stacking lane length needed for the anticipated volume of drive through vehicles, turning movements, roadway capacity and level of service on adjacent streets.
- (e) The proposed general system of utilities (including domestic water supply, fire protection, storm water drainage, and sanitary sewer). A statement on the projected impact of the project on public water supply, drainage and sanitary sewer systems. The proposed location of major storm drainage culverts and drainage basins serving the site shall be indicated.  
  
A storm water management report as required in the "Town of Manchester Public Improvement Standards" shall also be submitted. All developments shall meet the applicable provisions of the "Town of Manchester Public Improvement Standards".
- (f) Such other relevant information as the applicant may wish to submit or the Commission may require.

22.08      Use Variances

The Zoning Board of Appeals shall not be permitted to grant use variances in the Design Commercial Business Zone.

22.09<sup>5</sup>      Automobile Related Uses

A gasoline service station legally developed or approved prior to May 1, 2004, shall be a legal and conforming use.

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<sup>5</sup> Revised 4/19/2004, effective 5/8/2004

ARTICLE II            ZONING USES

ARTICLE II            Section 23      NEIGHBORHOOD BUSINESS ZONE<sup>1</sup>

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23.00            Purpose

A Neighborhood Business zone is a commercial district within or adjacent to residential neighborhoods. Its purpose is to provide stores and service establishments for the convenience shopping and service needs of persons residing in the neighborhood and incidentally to others peripheral to the neighborhood. In this zone no building or land shall be used and no building shall be erected or altered except in accordance with the uses set forth in this section.

23.01            Permitted Uses

The following uses are permitted providing that within a building or group of buildings, no store or establishment occupies more than 5,000 square feet of gross floor area.

23.01.01      Retail Uses, to include shops where articles are made or repaired and sold at retail on the premises, as well as the following and uses similar to the following:

Alcoholic Liquor Sales: limited to grocery store beer permit only, and package store permit, subject to the provisions of Article IV, Section 8 of these regulations.

Apparel Stores

Book Stores, Specialty Gift and Hobby Stores, Photographic Equipment Stores, Convenience Stores

Florist Shop

Food Markets, Bakeries, Specialty Food Stores, Confectionery Stores, and Delicatessens including service of food for takeout.

Hardware and Auto Parts Store

Home Appliance and Household Goods Store

Pharmacy

Radio, Television, and Electronics, to include Computer and Software Stores, sales and service, as well as classes or programs related to the business.

Sporting Goods Stores and Bicycle Shops

23.01.02      Personal Services, to include the following and uses similar to the following:

Animal Grooming

Appliance, TV, Electrical and Computer Repairs

Banking Services

Beauty Shops and Barber Shops

Computer and Data Processing

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<sup>1</sup> NEW 07/07/99, effective 07/27/99

Dry Cleaners and Laundromats  
Equipment Rental and Leasing, excluding automotive or truck rental or leasing  
Financial Services  
Furniture and Upholstery Repairs  
Photocopying, Printing, and Duplicating  
Studios  
Tailor Shop and Shoe Repair

23.01.03 Office Uses to include the following and uses similar to the following:

Insurance, Financial Institutions, Real Estate  
Lawyers, Engineers, Accountants, Landscape Architects, Architects, and  
Planners  
Offices and Clinics of Medical Doctors, Dentists, similar Health Professional,  
and allied Health Services  
Professional, Commercial, and Medical

23.01.04 Restaurant.

23.01.05 Residential units - above the first story, provided that:

- (a) minimum floor areas shall be provided in accordance with Article IV, Section 2.03.03 (a);
- (b) parking shall be provided in accordance with Article IV, Section 2.08;
- (c) there shall be provided on the site landscaped areas at a ratio of one hundred (100) square feet for each residential unit. Landscaped areas required elsewhere in these regulations shall not be credited for this requirement;
- (d) residential unit shall be limited to a single story within the structure;
- (e) public water and sewer shall be provided.

There shall be no restriction on the number of dwelling units contained within a structure provided the requirements in this section and the requirements of the specific zone are maintained.

23.01.06 As of January 25, 1972, group dwellings may not be built in Neighborhood Business zone, but group dwellings and apartments lawfully existing or approved on or before January 25, 1972, shall be legal and conforming.

23.01.07 Municipal offices, police stations and fire houses provided the site abuts a major or minor arterial as defined by the town's Plan of Conservation and Development.

- 23.01.08 Family day care homes conducted in a dwelling unit.
- 23.01.09 (a) Wireless telecommunications antennas located on nonresidential buildings and camouflaged from views from all surrounding streets and driveways used by the general public together with associated equipment located within or on the roof of the principal or accessory buildings.
- (b) Wireless telecommunication sites where the antenna is mounted to existing towers, utility poles, water towers, light standards, bridges, or other structures not classified as buildings.
- (c) All facilities described in (a) and (b) above shall be in accordance with the requirements of Article IV, Section 19.<sup>2</sup>

23.02 Use Provisions

All uses shall be subject to the provisions of Article II, Section 9, and any other provisions of these regulations which may be pertinent and applicable.

23.03 Height, Stories and Area

Maximum stories in building	3
Maximum height of principal building	40 feet
Maximum height of accessory building or structure	18 feet
Minimum front yard	25 feet
Minimum side yard (each side)	15 feet

23.04 Special Exception Uses, subject to the requirements of the Special Exception Criteria of Article IV, Section 20

- 23.04.01 Carnivals and circuses  

May be conducted at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV, Section 16.
- 23.04.02 Municipal utility buildings and structures in accordance with the requirements of Article II, Section 2.02.13.
- 23.04.03 Adult day care center  

May be developed at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV Section 18.
- 23.04.04 Child day care center and group day care home

<sup>2</sup> New 11/03/03, effective 11/28/03



May be developed at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV, Section 10

23.04.05 Drive-Through Facilities

23.04.06 Alcoholic Liquor Sales:

Alcoholic liquor sales under a restaurant permit for beer only, restaurant permit for beer and wine only, and restaurant permit shall be permitted after public hearing and approval by the Planning and Zoning Commission under the following provisions, and those provisions of Article IV, Section 8 of these regulations not inconsistent herewith:

The Planning and Zoning Commission shall not give approval unless it finds that the location is suitable, due consideration being given to the character of the district, the particular suitability of the district for the particular use, the conservation of property values, the proximity of schools, churches, libraries, theaters or playhouses or other places of public gathering, the intersection of streets, traffic conditions, width of the highway and effect on public travel, and that such use will not imperil the health, general welfare and safety of the public and in the case of a restaurant permit that the property line of the proposed use is at least 1000 feet from the property line of any other property where a restaurant permit exists.

The Planning and Zoning Commission may impose such special conditions as it finds necessary to protect the public safety, health, general welfare, convenience and property values, including but not limited to restrictions on hours of operation, restrictions on type of entertainment, by area devoted to music, dance, or performance, time of performance, advertising of the availability of alcoholic beverages visible from the exterior of the premises, notwithstanding any provisions to the contrary within the requirements of this section.

Buildings or premises (as defined in Article IV, Section 8.04 of these regulations) must contain at least 2,000 square feet of indoor space used for customer service or assembly.

The use of any bar in the restaurant premises must be confined to a service bar only, in an area where patrons are not allowed to produce or obtain drinks at said service bar.

The part of such building or premises must be at least 100 feet from any residentially zoned dwelling.

On-site vehicle parking must be in accordance with the provisions of Article IV, Section 9 of these regulations.

ARTICLE II            ZONING USES

ARTICLE II            Section 24      GENERAL BUSINESS ZONE<sup>1</sup>

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24.00            Purpose

A General Business Zone is a commercial trade area for general public shopping convenience. The uses allowed in this zone are by virtue of being permitted uses or special exceptions as defined in these regulations, and no building or land shall be used and no building shall be erected or altered except in accordance with the provisions and uses set forth in this section.

24.01            Permitted Uses

- 24.01.01      Retail Uses to include shops where articles are made or repaired and sold at retail on the premises, convenience stores.
- 24.01.02      Personal Services and personal service shops.
- 24.01.03      Office Uses
- 24.01.04      Alcoholic liquor sales subject to the provisions of Article IV, Section 8, of these regulations.
- 24.01.05      Restaurants, drive-in restaurants, sidewalk cafes (See Article II, Section 9.14.02), taverns, grills.
- 24.01.06      Hotels and motels, with not less than 16 rentable sleeping accommodations.
- 24.01.07      Newspaper and job printing.
- 24.01.08      Radio and television broadcasting studio.
- 24.01.09      Clubs and fraternal organizations.
- 24.01.10      Funeral parlor.
- 24.01.11      Public utility building, municipal building and uses.
- 24.01.12      Municipal parking lot.
- 24.01.13      Billiard or poolroom, bowling alley, theaters, and other similar indoor games and indoor recreational activities.
- 24.01.14      Tennis and badminton court, skating rink, health and recreation club, and similar recreational activities.

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<sup>1</sup> New: Adopted 06/05/00, effective 06/24/00

24.01.15 Residential units - above the first story, provided that:

- (a) minimum floor areas shall be provided in accordance with Article IV, Section 2.03.03;
- (b) parking shall be provided in accordance with Article IV, Section 2.08;
- (c) there shall be provided on the site landscaped areas at a ratio of one hundred (100) square feet for each residential unit. Landscaped areas required elsewhere in these regulations shall not be credited for this requirement;
- (d) residential unit shall be limited to a single story within the structure;
- (e) public water and sewer shall be provided.

There shall be no restriction on the number of dwelling units contained within a structure provided the requirements in this section and the requirements of the specific zone are maintained.

24.01.16 Family day care homes conducted in a dwelling unit.

- 24.01.17<sup>2</sup>
- (a) Wireless telecommunication antennas located on nonresidential buildings and camouflaged from view from all surrounding streets and driveways used by the general public together with associated equipment located within or on the roof of the principal or accessory buildings.
  - (b) Wireless telecommunications sites where the antenna is mounted to existing towers, utility poles, water towers, light standards, bridges or other structures not classified as buildings.
  - (c) All facilities described in (a) and (b) above shall be in accordance with the requirements of Article IV, Section 19.

24.02 Special Exception Uses, subject to the requirements of the Special Exception Criteria of Article IV, Section 20

24.02.01 The following uses shall require special exception approval from the Planning and Zoning Commission:

- (a) Bulk storage or warehouse and distribution for such commodities as food, furniture, hardware, and office supplies.

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<sup>2</sup> New 11/03/03, effective 11/28/03

- (b) Light Industrial Facilities.
- (c) Self Storage Facilities.
- (d) Any permitted or special exception use which serves customers from drive through windows.
- (e) Municipal utility buildings and structures in accordance with the requirements of Article II, Section 2.02.13.
- (f) Multi-family historic mill conversion in accordance with the requirements of Article II Section 9.14.03.
- (g) Schools:

May be developed at the discretion of the Planning and Zoning Commission. In addition to the special exception requirements in Article IV Section 20, before approving a school as a special exception use, the Commission shall make the following findings:

- (1) That the specific type of school use will be compatible with uses on adjacent properties and other uses on the site if applicable; and
- (2) That adequate provisions have been made to ensure the safety of students, staff, and visitors, including such as may arise from uses on adjacent properties or other uses on the site; and
- (3) That the internal site circulation plan for the school provides adequate area for the delivery and retrieval of students at the school; adequate parking for students, faculty, visitors, aides, and others as appropriate to the specific type of school; and sufficient driveways, queuing areas, and parking areas to accommodate automobiles and buses, so that vehicles do not disrupt traffic on the public streets, or interfere with adjacent uses on the site; and
- (4) That outdoor areas on the site for safe active and/or passive recreation as appropriate to the specific type of school are adequate for the number and ages of students expected to attend the school; or if off site, are located to ensure the safety of the students and faculty; and that screening, fencing and other buffers are provided to ensure the safe play of children, and to provide visual and aural screening from adjacent residential uses; and
- (5) That lighting for the property is adequate for the normal hours of school, including any after school activities, and does not shine off of the property.

In addition to any other application requirements for a special exception, applications for schools shall include sufficient plans and narrative documentation to enable the Commission to make the findings listed above.

24.02.02 The following uses shall require special exception approval from the Zoning Board of Appeals:

- (a) Automobile sales - new and/or used.  
Automobile repair and service garage or shop.  
Bulk oil storage plants

Subject to the requirements of Article IV, Section 5, of these regulations.

A gasoline service station legally developed or approved prior to February 15, 1972, shall be a legal and conforming use.

- (b) Automobile wash establishment

Subject to the requirements of Article IV, Section 6, of these regulations.

- (c) Adult day care center

May be developed at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV Section 18.

- (d) Child day care center and group day care home

May be developed at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV, Section 10.

- (e) Carnivals and circuses

May be conducted at the discretion of the Zoning Board of Appeals in accordance with the requirements of Article IV, Section 16.

24.02.03 Group dwellings may not be built in General Business zones but group dwellings and apartments lawfully existing or approved on or before January 25, 1972, shall be legal and conforming.

24.03 Use Provisions

All uses shall be subject to the following:

- (a) Article II, Section 9, of these regulations;

(b) No principal or accessory use shall be detrimental to public welfare by reason of noise, vibration, smoke, dust, fumes or odor.

24.04 Height, Stories and Area

Maximum stories in building	3
Maximum height of principal building	40 feet
Maximum height of accessory building or structure	18 feet
Minimum front yard for permitted uses	25 feet

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ARTICLE II            ZONING USES

ARTICLE II            Section 25      DESIGN OVERLAY ZONE<sup>1</sup>

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25.00            Purpose

The purpose of the Design Overlay Zone is to ensure development in previously developed areas will protect, preserve, and enhance the unique historical and/or architectural qualities of overlay districts and retain an area's distinctive character and scale, and to promote the best examples of architecture found in overlay districts to improve existing property conditions, address the presence of blighted conditions, and increase property values.

25.01            Applicability

25.01.01        The provisions of this section shall apply to the construction of new buildings, and changes and additions or alterations to existing buildings, and to new accessory structures or alterations or additions to existing accessory structures that are visible from the street. The repair or replacement of exterior materials or architectural features with the same materials or architectural features are not subject to these regulations.<sup>2</sup>

25.01.02        The Commission may waive the front yard requirements of the overlay zone to reinforce the prevailing front yard dimensions of the street. The front yard shall be the same as the greatest existing yard front yard dimension on abutting properties unless otherwise approved by the Commission.

25.02            General Standards for Rehabilitated or Altered Structures

25.02.01        The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

25.02.02        Deteriorated architectural features shall be repaired or replaced to the extent practical. In the event replacement is necessary, the new material should match the material being replaced in composition, design, and texture when feasible.

25.02.03        Design shall be generally compatible with size, scale, material, and character of the original structure and with the standards established in Article II, Section 25.03.

25.03            General Standards for New Construction

25.03.01        Buildings should be built to a height compatible with existing adjacent buildings, and should be built with the same number of stories. The Commission may approve variations in height of buildings if it finds the variation can still meet the design review and general criteria.

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<sup>1</sup> New 06/20/05, effective 07/18/05

<sup>2</sup> Revised 09/18/06, effective 10/07/06

- 25.03.02 The relationship of the building width to the height should be similar to and compatible with adjacent buildings as seen from the public street and publicly accessible areas. Structures designed so that their apparent horizontal and vertical scale reflects the scale of principal structures on the same block and on the block face across the street are preferred. The scale of a structure is (1) the apparent size and bulk of the structure and its components compared to the size of adjacent buildings and to the human scale and (2) the apparent size and bulk of the structure compared to the components of the facade. Discretion in scale is permitted with appropriate building massing.
- 25.03.03 The building or addition should be similar in form, complexity and ornamental detail to adjacent buildings. This assessment will be made against the dominant characteristics of buildings within the district.
- 25.03.04 The roofs of new buildings or additions which are visible from the public street and public areas should relate in pitch, shape and material to the roofs of existing adjacent buildings, and buildings within the district.
- 25.03.05 Entrances, porches, porticos, and other projections to be incorporated into new buildings should relate to the pattern of existing adjacent buildings and the street in such a manner as to reinforce the prevailing form.
- 25.03.06 Directional expression of facades should be compatible with that of existing adjacent buildings and buildings along the street within at least 250 feet. The dominant directional expression, either horizontal or vertical, is determined by the structural form of the building, the shapes of the openings (windows and doors) and architectural detailing and ornament.
- 25.03.07 The ratio of the width to the height of the buildings, windows and doors should relate to and be compatible with existing adjacent buildings where these features are visible from the street or public areas. Likewise, the relationship between the walls (e.g., solids) and voids (e.g., windows) should be compatible with adjacent buildings and buildings within the district.
- 25.03.08 The exterior facade materials for new developments should be compatible with and reinforce the prevailing building materials of adjacent buildings and the buildings along the street. Alternate materials may be used but should follow the prevailing directional expression (horizontal or vertical) of adjacent buildings.
- 25.03.09 The exterior facade materials for an addition or alteration or renovation should either be the same as the existing building, or a material that simulates the existing or compatible material. Alternative materials may be used if they are consistent with the prevailing building materials of buildings within the district.



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25.04      Application Requirements

25.04.01    Approval Process<sup>3</sup>

If the proposed rehabilitation, alteration or new construction complies with the general standards established in the overlay zone, the plans will be reviewed and approved administratively. The Planning Director and the Planning and Zoning Commission Chair or their designees will review the development for compliance to these standards.

If the proposed rehabilitation, alteration, or new construction is found not to comply with the general standards by the Planning Director or the Planning and Zoning Commission Chair, the application will be referred to the full Planning and Zoning Commission for plan review. Also, an applicant may request a review before the full Planning and Zoning Commission instead of the administrative approval of the Planning Director and Planning and Zoning Commission Chair.

An application subject to this section shall include the following:

- (a) Site Plan – a plan having a scale of not less than 1" = 40' showing existing and proposed structures, existing and proposed driveway and sidewalk locations, existing and proposed vehicle parking areas with number of spaces, and existing and proposed landscaping including clearing limits for development impacting existing wooded areas.
- (b) Building Elevations – a plan drawn to scale showing existing and proposed elevations for all building facades. Existing and proposed materials, including composition and color, must be identified on all building elevations.
- (c) Other relevant information the applicant may wish to submit, or that the Director or Chair may request, to determine compliance with 25.02 above.
- (d) Any of the application requirements of (a),(b) and (c) above may be waived at the discretion of the Planning Director if the application requirement is not relevant to the specific proposal.

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<sup>3</sup> Revised 09/18/06, effective 10/07/06