

Strauss, Patricia

From: Matthew Mandell <matthew@westportd1.com>
Sent: Thursday, September 29, 2016 1:10 PM
To: # TOW-RTM Mailing List
Subject: RTM Appeal Update - Legal Memo and PZ
Attachments: Conn. Gen. Stat. _ 8-3.pdf

RTMs,

I received the below email from Town Attorney Ira Bloom as a follow up to what was discussed in the RTM PZ Committee meeting on Tuesday night concerning the P&Z work session and the text amendment. It affirms what he said at the meeting.

I have spoken to P&Z Chair Cathy Walsh, she will be discussing this memo/issue with the P&Z commission in work session tonight at their regular meeting.

I plan on attending. I will report back on it.

Matthew Mandell
RTM PZ Chair

----- Original Message -----

Subject: 1177 PRE

Date: Wed, 28 Sep 2016 20:04:12 +0000

From: Ira Bloom <ibloom@bmdlaw.com>

To: 'Matthew Mandell' <matthew@westportd1.com>

CC: Cathy Walsh <cawalsh6@optonline.net>, "spalmer@westportct.gov" <spalmer@westportct.gov>

Matthew: With regard to the issue of the P&Z considering the "alternate plan" a/k/a "3 & 3" plan, I discussed this today with Cathy Walsh and Steve Palmer. As I noted last night, the P&Z "work session" does not provide for any public comment—none from the public and none from the applicant. It is used for "minor" changes in site plans. I do not believe a change from the approved 8-30g site plan to the "alternate" site plan is a minor change. Even putting aside this concern, the "alternate" plan requires changes to the text amendment approved along with the 8-30g site plan. The attached statute,, 8-3(a) requires a public hearing for text changes. The "work session" cannot be used for a text change.

Regards, Ira



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Conn. Gen. Stat. § 8-3

Current through all 2016 Public Laws

LexisNexis® Connecticut Annotated Statutes > Title 8 Zoning, Planning, Housing and Economic and Community Development > Chapter 124 Zoning

**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. Such hearing shall be held in accordance with the provisions of section 8-7d. 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. 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 all the members of the zoning commission, except as otherwise provided in this chapter. In making its decision the commission shall take into consideration the plan of conservation and development, prepared pursuant to section 8-23, and shall state on the record its findings on consistency of the proposed establishment, change or repeal of such regulations and boundaries with such plan. 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 act upon 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.
- (e) 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. Such official shall inform the applicant for any such certification that such applicant may provide notice of such certification by either (1) publication in a newspaper having substantial circulation in such municipality stating that the certification has been issued, or (2) any other method provided for by local ordinance. Any such notice shall contain (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of section 8-7.

(g)

- (1) 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 commission shall, within the period of time established in section 8-7d, accept the filing of and shall process, pursuant to section 8-7d, any site plan application involving land regulated as an inland wetland or watercourse under chapter 440. 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 commission shall give due consideration to the report of the inland wetlands agency and if the commission establishes terms and conditions for approval that are not consistent with the final decision of the inland wetlands agency, the commission shall state on the record the reason for such terms and conditions. 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 a site plan or modified site plan, require a financial guarantee in the form of a bond, a bond with surety or similar instrument to ensure (A) the timely and adequate completion of any site improvements that will be conveyed to or controlled by the municipality, and (B) the implementation of any erosion and sediment controls required during construction activities. The amount of such financial guarantee shall be calculated so as not to exceed the anticipated actual costs for the completion of such site improvements or the implementation of such erosion and sediment controls plus a contingency amount not to exceed ten per cent of such costs. At any time, the commission may grant an extension of time to complete any site improvements. 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. The provisions of this subsection shall apply to all zoning commissions or other 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.
- (2) To satisfy any financial guarantee requirement, the commission may accept surety bonds and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit, provided such other financial guarantee is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such financial guarantee may, at the discretion of the person posting such financial guarantee, be posted at any time before all approved site improvements are completed, except that the commission may require a financial guarantee for erosion and sediment controls prior to the commencement of any such site improvements. No certificate of occupancy shall be issued before a required financial guarantee is posted or the approved site improvements are completed to the reasonable satisfaction of the commission or its agent. For any site plan that is approved for development in phases, the financial guarantee provisions of this section shall apply as if each phase was approved as a separate site plan. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall (A) require a financial guarantee or payment to finance the maintenance of roads, streets, retention or detention basins or other improvements approved with such site plan

for more than one year after the date on which such improvements have been completed to the reasonable satisfaction of the commission or its agent or accepted by the municipality, or (B) require the establishment of a homeowners association or the placement of a deed restriction, easement or similar burden on property for the maintenance of approved public site improvements to be owned, operated or maintained by the municipality, except that the prohibition of this subparagraph shall not apply to the placement of a deed restriction, easement or similar burden necessary to grant a municipality access to such approved site improvements.

- (3) If the person posting a financial guarantee under this section requests a release of all or a portion of such financial guarantee, the commission or its agent shall, not later than sixty-five days after receiving such request, (A) release or authorize the release of any such financial guarantee or portion thereof, provided the commission or its agent is reasonably satisfied that the site improvements for which such financial guarantee or portion thereof was posted have been completed, or (B) provide the person posting such financial guarantee with a written explanation as to the additional site improvements that must be completed before such financial guarantee or portion thereof may be released.
- (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 the 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 other 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

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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.

- (m) Notwithstanding the provisions of this section, any site plan approval made under this section prior to July 1, 2011, that has not expired prior to May 9, 2011, except an approval made under subsection (j) of this section, shall expire not less than nine years after 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 no approval, including all extensions, shall be valid for more than fourteen years from the date the site plan was approved.

History

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; P.A. 02-74, S. 1; 02-77, S. 1; P.A. 03-144, S. 1; 03-177, S. 1; P.A. 06-20, S. 1; P.A. 07-102, S. 1; P.A. 08-38, S. 1; P.A. 09-181, S. 1; P.A. 11-5, S. 1; 11-79, S. 1; P.A. 12-182, S. 1, eff. June 15, 2012.

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