



**Town of Westport**  
Planning & Zoning Commission  
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## MEMORANDUM

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**TO:** Whom it May Concern

**FROM:** Mary Young AICP, P&Z Director, on behalf of the  
Planning and Zoning Commission

**DATE:** November 15, 2019, **Updated Feb. 7, 2020**

**SUBJECT:** **Explanatory Statement for Text Amend. #779, Process Changes for  
Coastal Area Management (CAM) Applications**

### **Subcommittee Background**

The Process Efficiency Subcommittee of the Planning and Zoning Commission was created at the Annual Meeting held in December 2017 by P&Z Member Greg Rutstein who offered to serve as Committee Chair and who created the following Mission Statement and Committee Objectives:

***Mission Statement:***

*To review, and, where appropriate and lawful, revise, various processes carried out by the Planning and Zoning Commission, Staff and applicants for the purpose of making such processes less time consuming and resource intensive.*

***Objectives:***

- *Better align responsibility for various processes (e.g., commission vs staff) where lawfully permitted*
- *Revise zoning regulations and (as necessary) by-laws and internal policies to carry out the mission of this subcommittee*
- *Preserve an appropriate level of review/oversight of relevant processes so as to minimize the risk of having unintended and undesired consequences resulting from any changes to such processes*
- *Ensure the public is afforded sufficient transparency and the ability to engage on whether and how relevant processes should be revised*

### **Text Amendment Background**

#### **Coastal Area Management Act**

The State of Connecticut adopted the Coastal Management Act in 1979 in part to ensure development, preservation or use of the land and water resources of the coastal area (see definition for Coastal Boundary) proceeds in a manner consistent with the rights of private property owners, and the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth. The provisions of the Coastal Management Act are codified in CGS §22a-109 through §22A-113.

CGS §22A-94 describes the Coastal Boundary. For purposes of administering the Act in Westport, the Coastal Boundary is the one thousand foot linear setback measured from the mean high water mark, and is depicted on the Town of Westport Official Building Zone Map.

Coastal Resources are defined in §22a-93 of the Act which in summary includes the coastal waters of the state, their natural resources, related marine and wildlife habitat and adjacent shorelands, both developed and undeveloped, that together form an integrated terrestrial and estuarine ecosystem.

CGS §22a-109(a) of the Act identifies what activities should be reviewed as part of a Coastal Site Plan review to determine potential adverse impacts to Coastal Resources including any proposed building, use, structure or shoreline flood and erosion control structure located fully or partially within the Coastal Boundary.

CGS §22a-109(b) of the Act identifies what activities a municipality may exempt from Coastal Site Plan review:

*“1) Minor additions to or modifications of existing buildings or detached accessory buildings, such as garages and utility sheds;*

*(2) Construction of new or modification of existing structures incidental to the enjoyment and maintenance of residential property including but not limited to walks, terraces, elevated decks, driveways, swimming pools, tennis courts, docks and detached accessory buildings;*

*(3) Construction of new or modification of existing on-premise structures including fences, walls, pedestrian walks and terraces, underground utility connections, essential electric, gas, telephone, water and sewer service lines, signs and such other minor structures as will not substantially alter the natural character of coastal resources or restrict access along the public beach;*

*(4) Construction of an individual single-family residential structure except when such structure is located on an island not connected to the mainland by an existing road bridge or causeway or except when such structure is in or within one hundred feet of the following coastal resource areas: Tidal wetlands, coastal bluffs and escarpments and beaches and dunes;*

*(5) Activities conducted for the specific purpose of conserving or preserving soil, vegetation, water, fish, shellfish, wildlife and other coastal land and water resources;*

*(6) Interior modifications to buildings; and*

*(7) Minor changes in use of a building, structure or property except those changes occurring on property adjacent to or abutting coastal waters.*

*Gardening, grazing and the harvesting of crops shall be exempt from the requirements of this chapter.”*

CGS §22a-109(b) identifies a municipality may not exempt from Coastal Site Plan review any proposed Shoreline Flood and Erosion Control Structure, as defined in CGS §22a-109(c).

CGS §22a-109(e) identifies a public hearing on a coastal site plan may be required for any activities regulated within the Coastal Boundary that are not deemed exempt.

CGS §22a-109(e) also identifies a public hearing shall be held on a coastal site plan for a Shoreline Flood and Erosion Control Structure upon the request of the Commissioner of the Department of Energy and Environmental Protection (DEEP).

### Local Coastal Area Regulations

The Coastal Area Regulations are listed in §31-10 of the Westport Zoning Regulations. §31-10.5 and §31-10.6 identifies the activities that require Coastal Site Plan Review and those activities that are exempt from Coastal Site Plan Review consistent with the authority vested pursuant to the Coastal Management Act.

§31-10.7.5 and §43-5.2 of the Zoning Regulations when read together require a public hearing for all activities occurring within the Coastal Boundary that are not expressly exempt pursuant to §31-10.6:

#### **31-10.7.5 Public Hearing**

In reviewing a Coastal Site Plan in accordance with the requirements of §22a-109 of the CAM Act, the Commission or Board will hold a public hearing on a Coastal Site Plan if required by these regulations.

#### **43-5.2 Site Plan Review and Hearings**

Site Plan approval by the Planning & Zoning Commission shall be required for construction, addition or alteration of a non-residential building involving more than five hundred (500) square feet of building coverage or containing more than five hundred (500) sq ft of gross interior floor space, or any of the uses or activities listed below:

- 2) Activities located within the Coastal Boundary pursuant to §31-10.6.

To date, most Coastal Site Plan applications that come before the Planning and Zoning Commission at a public hearing involve residential house construction and/or additions proposed within 100-feet of coastal resources and/or 200-feet of mean high water. To date the Planning and Zoning Commission approves most of these Coastal Site Plan applications.

### Process Reconsiderations

Review by the Planning and Zoning Commission of any Site Plan application including a Coastal Site Plan application is an administrative function, not a legislative function. The Commission is obligated to approve a Site Plan application if it complies with the Zoning Regulations. This fact gave cause to the Process Efficiency Subcommittee to investigate whether holding a public hearing on all Coastal Site Plan application continues to have merit, especially because the statutes do not require it but for when the Commissioner of DEEP requests a public hearing for review of a proposed Shoreline Flood and Erosion Control Structure.

The mechanics of holding a public hearing can be resource-intensive for the applicants as well as the reviewing bodies (Planning and Zoning Commission and Zoning Board of Appeals). Holding a public hearing can cause unnecessary delays and expense for residents and can add to the already heavy workload of the reviewing bodies.

The Process Efficiency Subcommittee Chairman explored with Peter Gelderman of the Town Attorney's Office whether there is any flexibility regarding how CAM Site Plan applications are processed and whether a public hearing must be held? Attorney Gelderman offered:

- The Commission must act on CAM Site Plans pursuant to CGS §22-109 (this authority may not be delegated to staff);
- How the Commission chooses to act is up to the Commission;
- One section of the Zoning Regulations clearly requires a public hearing shall be held (§43-5.2) while another section identifies a public hearing shall be required if otherwise required pursuant to another section (§31-10.7.5);
- This process can be changed by preparing a text amendment to modify §43-5.2 to more clearly identify a public hearing is not required for CAM Site Plan Reviews, and allow the Commission to review CAM Site Plans during their administrative sessions (known as the Work Session) potentially expediting the review process for all concerned; and
- Caveat: If a CAM Site Plan review is attached to a Special Permit application or any other type of application requiring a public hearing pursuant to State Statutes, a public hearing must be held at a minimum on that portion of the application for which a hearing is mandated.

A Process Efficiency Subcommittee public meeting was held on 12/11/18 wherein a number of ideas were presented and debated at the meeting attended by six of the seven- member Planning and Zoning Commission. Majority consensus appeared to support modifying the Zoning Regulations to utilize the discretion granted by the State Statutes for the Commission's Coastal Site Plan review process and consider moving their reviews and decisions related to Coastal Site Plan applications for residential development to their Administrative Sessions (aka Work Sessions), rather than conduct these reviews during a public hearing. Both the Administrative Work Sessions and Public Hearings are open to the public to attend. Public participation is only required during a Public Hearing.

There was also consensus at the 12/11/18 Subcommittee Meeting that Coastal Site Plan review at a public hearing of any Shoreline Flood and Erosion Control Structures as defined in §22a-109(c) should be maintained. The policies of the Department of Energy Environmental Protection (DEEP) described in the Coastal Area Management Act were acknowledged that discourage these structures unless all other feasible and prudent alternatives have been exhausted to protect a home constructed prior to 1995 due to their potential adverse impacts to coastal resources and adjacent properties.

**A draft text amendment dated Nov. 15, 2019 was reviewed at two additional Process Efficiency subcommittee public meetings held in 2020, including a daytime meeting held on Jan. 9, 2020 and an evening meeting held on Jan. 16, 2020. A majority of the subcommittee members voted at their Jan. 26, 2020 meeting to bring the proposal before the full Planning and Zoning Commission for a vote regarding whether to bring the proposal to a future public hearing as a formal text amendment. The vote was 2-0-1 with Mr. Rutstein and Mr. Olefson voting in favor of receiving feedback from the full Commission, and Ms. Walsh abstaining.**

**The Planning and Zoning Commission reviewed the proposal at their Feb. 6, 2020 Work Session and a majority voted to make the proposal a formal Text Amendment for review at a future public hearing to solicit feedback from residents and other interested parties. The vote was 5-0-1 with Ms. Dobin, Mr. Rutstein, Mr. Olefson, Mr. Cammeyer, and Mr. Lebowitz voting in favor, and Mr. Stephens voting against the motion.**

## **Proposal**

The text proposes two (2) changes intended to provide flexibility and discretion to the Planning and Zoning Commission regarding the manner in which Coastal Area Management (CAM) Site Plan applications are processed for residential development, including:

1. Remove language from §31-10.7.5 requiring a public hearing for Coastal Site Plan Application;
2. Remove language from §43-5.2 requiring a public hearing for “activities located within the Coastal Boundary;” and replace it with new language requiring a public hearing only for non-residential activities pursuant to §31-10.6 and any Shoreline Flood and Erosion Control Structure as defined in CGS §22a-109.

## **Reasons**

1. The overall rationale for the amendment is to make strides creating a more streamlined and efficient approval process for all parties concerned consistent with the Mission Statement of the Planning and Zoning Commission’s Process Efficiency Subcommittee.
2. Streamlining the approval process by removing the public hearing requirement for some activities occurring within the Coastal Boundary will afford an expedited approval process for the affected applicants, the residents of Westport, and may reduce expenses to Westport residents associated with the need to hire consultants and others to present an application at one or more public hearing.
3. Reducing the number of activities that warrant a public hearing for Coastal Site Plan review will enable the Commission and the public to focus their resources analyzing potential impacts to on-site or adjacent coastal resources that resulting from non-residential activities and/or Shoreline Flood and Erosion Control Structures in a manner more consistent with the Coastal Management Act.