

# Memorandum

**To:** Members, Planning and Zoning Commission

**From:** Mary Young AICP, Planning and Zoning Director

**Date:** March 11, 2020

**Re: Amendment #779/PZ-20-00139, Process Changes for Planning and Zoning Commission Review of Residential Coastal Site Plan Applications**

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**Statutory Time Lines** (*No Statutory Deadlines for Text Amendments authored by the P&Z Commission*)

Application Submission Date: 2/7/20

Application Receipt Date: 2/13/20

Public Hearing Opened (*scheduled to open*): 3/19/20

## Summary

Have all documents been submitted as required in accordance with §42?	Yes
Does the application appear to meet all applicable zoning requirements?	Yes
Has the application received all necessary prior approvals?	Prior approvals are not required. The application was referred to the Department of Energy and Environmental Protection, Office of Long Island Sound Programs (DEEP, OLISP), and the regional planning agencies consistent with Connecticut General Statutes. The application was also referred to Town Department heads for comments consistent with past practices. All comments received to date are listed or attached herein.
Other comments?	Members of the Planning and Zoning Commission should consider whether the amendment is consistent with the Comprehensive Plan (Zoning Regulations, Zoning Map) and the Plan of Conservation and Development pursuant to C.G.S. §8-2, and whether there is a need for the amendment and any benefit if adopted pursuant to §42 of the Zoning Regulations.

**Description of Application**

Applicant	Planning and Zoning Commission
Requested Action	Text Amendment approval
Purpose	<p>The text proposes two (2) changes intended to provide flexibility and discretion to the Commission regarding the manner in which they review Coastal Site Plan applications for residential development, by:</p> <ol style="list-style-type: none"> <li>1. Removing language from §31-10.7.5 requiring a public hearing for Coastal Site Plan Applications; and</li> <li>2. Removing language from §43-5.2 requiring a public hearing for “activities located within the Coastal Boundary;” and replacing it with language requiring a public hearing only for non-residential activities pursuant to §31-10.6 and any Shoreline Flood and Erosion Control Structures as defined in CGS §22a-109.</li> </ol>
Location	<p>Properties located in the Coastal Boundary where residential activities are proposed (new house construction and/or additions greater than 25% of existing building or floor area) that do not qualify as exempt activities listed in §31-10 due to their proximity to coastal resources.</p>
2017 Plan of Conservation and Development	<p>The process changes proposed may be considered consistent with the <i>2017 Plan of Conservation and Development</i> that cites improving regulatory processes to be an important goal:</p> <p>From Chapter 6, (<i>Manage Coastal Areas</i>)</p> <p>6.1. Overview</p> <p><i>“Westport has an incredibly beautiful coastal area, and as a result, considerable pressure for coastal development. An appropriate balance needs to be maintained between protecting coastal resources and managing coastal development.” Pg. 45</i></p>
Applicable Regulations	<p>§31-10, Coastal Area Regulations, and §43-5.2, Site Plan Review and Hearings. The process and standards for review of Text Amendments are found in §42, Amendment of Zoning Regulations.</p>

## **Background**

As described in the Explanatory Statement updated 2/7/20 (attached), this Planning and Zoning Commission-authored amendment originated from the Process Efficiency Subcommittee of the Planning and Zoning Commission. The Process Efficiency Subcommittee was created at the Annual Meeting held in December 2018 by P&Z Member Greg Rutstein who volunteered to serve as Committee Chair. In January 2018, Mr. Rutstein 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.*

The Process Efficiency Subcommittee held four (4) subcommittee meetings to receive feedback and to help structure the proposed text. Copies of the meeting minutes are available in the file and are posted on the Town's website. Planning and Zoning Commission members, residents, Town Officials, and consultants who frequently appear before the Commission attended and offered contributions to the discussion.

At the subcommittee meetings, the enabling legislation for the Commission's review of Coastal Site Plans was discussed along with the statutory requirements for holding hearings. CGS §22a-109(e) identifies the Commission is only required to hold public hearings on a Coastal Site Plan for a *Shoreline Flood and Erosion Control Structure* if requested by the Commissioner of the Department of Energy and Environmental Protection (DEEP), on a case by case basis.

The subcommittee concluded since the state statutes require public hearings if requested by DEEP and because there has traditionally been heightened local public interest in proposed Shoreline Flood and Erosion Control Structures; the local zoning regulations should continue to require public hearings for these activities.

The subcommittee also concluded since the state statutes do not require public hearings for any other activities requiring Coastal Site Plan review by the Planning and Zoning Commission, than the Commission might process other Coastal Site Plan applications during the administrative portion of their meeting or Work Session.

The subcommittee additionally concluded any process change associated with the manner in which Coastal Site Plans are reviewed should be limited to construction of or additions to single-family homes that have not traditionally generated comments from local residents.

At the 2/6/20 Work Session, a majority of Planning and Zoning Commission members voted to support formalizing into a text amendment the proposal herein and to receive testimony from residents at a public hearing currently scheduled for March 19, 2020.

### **Proposal**

As described in the Explanatory Statement the amendment is intended to provide for a more streamlined process for the Commission to review Coastal Site Plan applications for residential development (new house construction and/or additions greater than 25% of existing building or floor area) that do not qualify as exempt activities listed in §31-10 consistent with the *Mission Statement* of the Planning and Zoning Commission's Process Efficiency Subcommittee, by:

1. Removing language from §31-10.7.5 requiring a public hearing for Coastal Site Plan Applications; and
2. Removing language from §43-5.2 requiring a public hearing for "activities located within the Coastal Boundary;" and replacing it with language requiring a public hearing only for non-residential activities pursuant to §31-10.6 and any Shoreline Flood and Erosion Control Structures as defined in CGS §22a-109.

### **Analysis**

If the Text Amendment is adopted the Planning and Zoning Commission will review during the administrative portion of their meeting or Work Session, Coastal Site Plans proposing construction of or additions to single-family homes that are not exempt from review pursuant to §31-10.6 due to their proximity to coastal resources described in §31-10.6.3-4 as:

- A. *"Located on an island not connected to the mainland; or*
- B. *Is within 200-feet of the Mean High Water Line (MHWL); or*
- C. *Is within 100-feet of the following coastal resource area: tidal wetlands, coastal bluffs and escarpment and beaches and dunes."*

All other current practices and procedures associated with residential Coastal Site Plans will remain in effect including notice to neighbors as confirmed by Certificates of Mailing upon submission of the application, opportunity for residents to communicate any support or objection by sending letters or emailing the Commission at [pandz@westportct.gov](mailto:pandz@westportct.gov), preparation of staff reports and referrals for comments from other Town departments for consideration by the Commission prior to rendering their decisions, and continuing items to future meetings if a majority of Commissioners determine missing information is integral to making a decision rather than requiring its submission prior to issuance of a Zoning Permit if approved.

In an effort to address concerns raised by at least one Commissioner, the Subcommittee Chairman offered for consideration by the full Commission potential process mechanisms to mitigate unanticipated consequences. For example, should a majority of the Commission determine during their administrative review a public hearing should instead be held on a particular application, a legal notice could be published and the application scheduled for a future public hearing. It was additionally suggested if the amendment is adopted it could be reevaluated in the future to determine if the new process is working as intended.

## Considerations

The Planning and Zoning Commission should consider the following before rendering any decision, as required by the Zoning Regulations and the Connecticut General Statutes. §42-3.3 of the Zoning Regulations describes the process for submission of a text amendment. Words to be deleted shall be bracketed and stricken out and additions shall be underlined. The application complies with these requirements.

§42-3.5 requires submission of an Explanatory Statement describing the need for the amendment and identifying any benefits to the Town. This application complies with these requirements. The Explanatory Statement describes the amendment allows for a more streamlined approval process for those specific types of Coastal Site Plan applications that have not traditionally solicited public interest.

C.G.S. §8-2, *Regulations*, requires consideration by the Planning and Zoning Commission that any regulations shall be made in accordance with the comprehensive plan (zoning regulations and zoning map), as well as the Plan of Conservation and Development (POCD). The amendment is focused on process changes not any specific site so there is limited correlation between the aforementioned plans and the proposal. However, it appears the amendment may be considered consistent with the POCD that contains language encouraging striking an appropriate balance between protecting coastal resources and managing coastal development.

## Notice to the Public

A legal notice appeared in the local newspaper and was posted in the Town Clerk's Office as required in accordance with C.G.S. §8-7d. A notice was additionally sent to the 37 persons currently listed on the Planning and Zoning Department's Notice of Registry in accordance with C.G.S. §8-7d(g). Additionally a press release was sent to local media outlets, and a referral sent to the RTM Planning and Zoning Committee Chairman to enhance public notice.

## Department Comments

The Text Amendment was referred to Town Department heads, the Department of Energy and Environmental Protection, Office of Long Island Sound Programs (DEEP, OLISP), and the regional planning agencies as required by the Connecticut General Statutes. DEEP submitted comments dated 2/21/20 that confirm the process may change as proposed consistent with state statutes, and additionally recommended further modifications to make clear what is intended. P&Z Staff along with Town Attorney Office staff reviewed these comments and offer a minor medication to the proposal to address DEEP's comments described below.

Should the Planning and Zoning Commission adopt Text Amendment #779, it should include a modification to make clear what is intended and to remove ambiguous language in §43-5.2 clarifying the Commission reserves the right to hold a public hearing when deemed necessary. The Commission is authorized to adopt any text amendment with minor modifications. The following modification to §43-5.2 should be included as part of adoption of the amendment:

Deleted language is ~~[struck out and in brackets]~~; New language is underlined.

The P&Z Commission, at its discretion, may hold a public hearing on an application for Site Plan review. ~~[other than an application for a Site Plan review covered by 43-5.1 & 43-5.2 above.]~~

The Conservation Director submitted comments dated 3/10/20 (attached) that conclude:

- She is opposed to the amendment; but
- If it is adopted she recommends going forward a pre-application meeting between applicants and staff be required to discuss what if any water quality safeguards should be included as part of a future application, and what if any construction logistics should be considered on small lots.

Pre-application meetings already occur at the option of all applicants. Most of the “frequent fliers” make use of this forum. On an as-needed basis, P&Z Staff schedules such meeting if not requested by an applicant. As the limited resources available to Town staff are already being maximized, this staff member would discourage mandating such meetings, as it will task other departments to utilize resources that might be more efficiently used only on an as-needed basis as it currently is.

Building Dept.:	Referral sent
Conservation Dept.:	See attached dated 3/10/20
Fire Dept.:	Referral sent
Parks & Rec. Dept.:	<i>“No comments.”</i> 3/6/20
Police Dept.:	<i>“No comments.”</i> 2/12/20
Public Works Dept.:	See attached dated 3/10/20
Town Attorney’s Office:	Referral sent
WWHD Director:	<i>“No objections.”</i> 2/11/20
CT DEEP/OLISP:	See attached dated 2/21/20
Western Council of Governments (WestCOG):	<i>“The proposal is of local interest and with minimal inter-municipal impacts.”</i> 2/11/20
Metropolitan Council of Governments (MetroCOG):	<i>“The changes to the regulations are not regionally significant.”</i> 2/21/19

**Other Comments**

In addition to the aforementioned efforts described in the Notice to the Public section herein, P&Z Staff reached out to attendees of the subcommittee meetings to make them aware the public hearing for the Text Amendment is scheduled. Comments received from meeting attendees are attached.

**Attached**

- Proposed Text Amendment #779, submitted 2/10/20, revised with suggested modification on 3/10/20
- Explanatory for Text Amendment #779, updated 2/7/20
- Comments from the Conservation Dept. dated 3/10/20
- Comments received from DPW dated 3/5/20
- Comments from DEEP dated 2/21/20
- Public comments received to date offering opinions on the amendment

**Available in the File**

- Chapter 444, Coastal Management (CGS §22a-90 to §22a-113)
- Copy of Mission Statement for the P&Z Commission's Process Efficiency Subcommittee
- Copies of Process Efficiency Subcommittee Meeting Minutes discussing the proposal including: Nov. 13, 2018, Dec. 11, 2018, Jan. 8, 2020 and Jan. 16, 2020
- Copy of Planning and Zoning Commission 2/6/20 Meeting Minutes when a majority of the Commission voted to move the proposal to a formal text amendment for review at a public hearing
- Copy of 3/13/20 Press Release RE: 3/19/20 public hearing to review Text Amendment #779

Text Amendment #779

Submitted: Feb. 10, 2020

Received: Feb. 13, 2020

Revised to Address DEEP Comments: March 10, 2020

Public Hearing (*scheduled*): March 19, 2020

Adopted as Modified: \_\_\_\_\_

Effective date: \_\_\_\_\_

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Deleted language is ~~[struck out and in brackets]~~; New language is underlined.

*The Following is From §31, Regulations Applying to All Districts:*

**~~§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.]~~

*The Following is From Sec. 43, Special Permit and/or Site Plan Review Procedures:*

**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:

- 1) A Change of Use pursuant to §5-2.
- 2) ~~[Activities located with the Coastal Boundary pursuant to §31-10.6].~~  
Non-residential activities pursuant to §31-10.6 of these regulations and any Shoreline Flood and Erosion Control Structure as defined in CGS §22a-109 located within the Coastal Boundary as described in CGS §22a-94.
- 3) Truck trailer storage for more than 7 days pursuant to §32-8.1.
- 4) Excavation and fill activities that are not exempt pursuant to §32-8.1.
- 5) Outdoor Special Events, pursuant to §32-23, that:
  - (a) Exceed ten (10) days in duration and are located in a non-residential district.
  - (b) Exceed two (2) days in duration and/or extend beyond 10:00pm on Fridays and Saturdays and are located in a residential district.
  - (c) Exceed seven (7) days in duration and/or extend beyond 10:00pm on Fridays and Saturdays and are located on a privately-owned property in a residential district containing a Special Permit Use.

The P&Z Commission, at its discretion, may hold a public hearing on an application for Site Plan review. ~~[, other than an application for a Site Plan review covered by 43-5.1 & 43-5.2 above.]~~



**Town of Westport**  
Planning & Zoning Commission  
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Westport, CT 06880  
203-341-1030 Facsimile (203) 454-6145  
[www.westportct.gov](http://www.westportct.gov)

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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 applications 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.



**WESTPORT, CONNECTICUT  
CONSERVATION DEPARTMENT**

TOWN HALL - 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341-1170 • FAX (203) 341-1088

RECEIVED  
MAR 10 2020  
WESTPORT P. & Z. C.

TO: Planning and Zoning Commission

FROM: Alicia Mozian, Conservation Director

DATE: March 10, 2020

**RE: Text Amendment #779, Process Changes for CAM Applications**

**Description:** To amend the Zoning Regulations to no longer require a CAM Site Plan application to be reviewed at a public hearing unless it is for a Shoreline Flood and Erosion Control Structure or an non-residential activity involving more than 500 sq. ft. of building coverage or containing more than 500 sq. ft. of gross interior floor space.

**Comments:** The Conservation Department is generally opposed to the proposed changes related to Section 31-10.7.5 that would eliminate the need for holding a public hearing for new houses that are proposed within 100 ft. of tidal wetlands, coastal buffs and escarpment and beaches and dunes, or within 200 ft. of mean high water. We are opposed for the following reasons:

1. The location of these houses in such close proximity to important coastal resources elevates them to needing a higher level of scrutiny. Such scrutiny entails not only analyzing whether they meet FEMA requirements, but also analysis of water quality provisions, including tidal wetland planting buffers, and short and long term erosion and sediment control. For example, the recent filling at 50 Compo Mill Cove where the activity is above the CJL (therefore not requiring CT DEEP approval) but the applicant is arguing that the wall is not an erosion control structure. That project has spurred quite a bit of public concern and has precedent setting consequences thus deserving of a public hearing.
2. Granted, much of this analysis is done by the Conservation Commission and Flood and Erosion Control Board but that is only if a project is also within the jurisdiction of the Waterway Protection Line Ordinance (WPLO). The WPLO does not cover Long Island Sound (see attached map.) Therefore, houses proposed south of Cross Way on Saugatuck Shores or abutting Bermuda Lagoon such as Bermuda Rd and Surf Rd. are not reviewed under the WPLO. Nor is Compo Mill Cove, Soundview Avenue or the south side of Beachside Avenue. Therefore, it is feared that the attention to water quality and erosion and sediment control will not be paid if no public hearing is held for these applications.

3. Eliminating public hearings and only holding work sessions to review applications will eliminate public comment that often leads to greater protection of the neighborhood. Often times, the public offers testimony that may shed light on issues that were not readily apparent to staff or commission members. These issues are then often addressed in conditions of approval that make the project even better than originally designed. 280 Compo Rd. South is a recent example that comes to mind.

Aside from perhaps Beachside Ave. and Stony Point Rd., most of these houses are proposed on lots less than one-half acre especially on Saugatuck Shores on streets like Conte Place or Rowland Court where even the logistics of dealing with large trucks and material stockpiling can cause disruption that needs to be well thought out before-hand and should not be a rubber stamp. Conversations with the applicant that take place at a public hearing often address these issues. However, it has always been our understanding, that even if work sessions are held in lieu of a public hearing, aside from the public not being able to speak, neither will the applicant. Thereby requiring the staff being ready to answer questions from the commission that could've been easily answered by the applicant if they were present. If those questions can't be answered the application can be continued – thereby having the opposite result of what is intended by making the process longer and less efficient.

4. Some properties that are in the CAM Zone that may or may not be in the WPLO, contain steep slopes, streets like Beachside Avenue or Stony Point Rd for example. Section 31-10.7.3 of your regulations may require you to have vegetative buffers on properties such as these. In some instances, conservation easements to protect steep slopes have also been employed. Wouldn't the applicant want to be present to join in the conversation when such conditions are being discussed?

For all these reasons, we respectfully request that this text amendment request be denied.

However, if, after careful consideration, the P&Z Commission decides to approve the proposed text amendment, then we would ask that the process for reviewing CAM Site Plan applications include a mandatory pre-application meeting with staff to discuss what safeguards will be put in place to protect the abutting coastal resources including a discussion about water quality safeguard and construction logistics especially on small lots.

Thank you for the opportunity to comment.



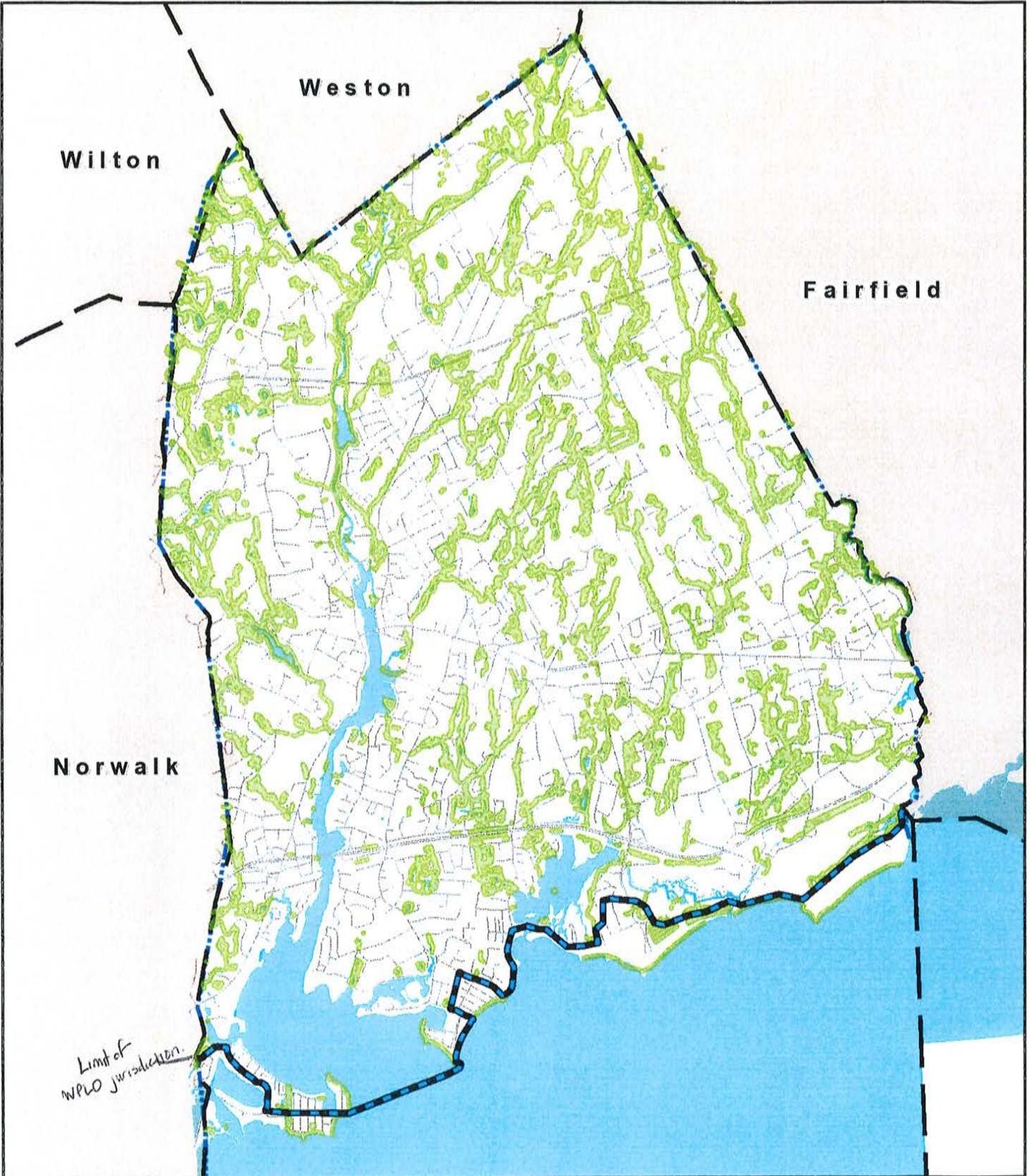
*Location of Waterway Protection Line  
Ordinance Boundary Limits  
Westport, CT*



1 inch = 4396 Feet



January 14, 2020



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.



## WESTPORT, CONNECTICUT

DEPARTMENT OF PUBLIC WORKS  
TOWN HALL, 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341 1120

RECEIVED

MAR 10 2020

WESTPORT P. & Z. C.

### MEMORANDUM

**Date:** 03/10/2020

**To:** Planning & Zoning Commission

**From:** Amrik Matharu, Engineer II

**Re:** Text Amendment #779; Appl. #PZ-20-00139

#### Reference Materials Reviewed:

- Text Amendment Application, not dated.
- Revised text for Section 31-10.7.5, and Section 43-5.2, of the Planning & Zoning Regulations, received 02/13/2020.
- Explanatory Statement for Text Amendment #77 from Mary Young, Director of Planning & Zoning, dated 02/15/2019, as revised to 02/07/2020.

Dear Planning & Zoning Commission:

Our office has reviewed the proposed text amendments as depicted by the above referenced documents. Based on these criteria, we offer the following comments:

1. **Project Description.** The text amendments are proposing to modify the Planning & Zoning Commission's role in Coastal Area Management (CAM) site plan reviews. From the material provided, the public hearing portion would only be required for activities involving shoreline erosion control structures.

Based on the referenced materials, we offer the following comment:

1. These changes will not affect the technical reviews from this office, or presumptively, technical reviews provided by the State of Connecticut Department of Energy and Environmental Protection (CT DEEP). Often technical reviews from CT DEEP provide additional information including, but not limited to, coastal erosion and accretion, wave action and impacts to adjacent properties, and coastal environmental impacts. Our office values the technical input from these reviews.

While the granting of this approval is at the discretion of the Commission, this office finds no issue with the text amendments as proposed.

Please contact me should you have any questions regarding the above items.

Thank you kindly,

A handwritten signature in black ink, appearing to read 'Amrik Matharu', with a long horizontal flourish extending to the right.

Amrik Matharu,  
Engineering Department

February 21, 2020

Planning and Zoning Commission  
c/o Mary Young, Planning and Zoning Director  
Town Hall  
110 Myrtle Avenue  
Westport, CT 06880

Re: Zoning Text Amendments for Zoning Text Amendments for Sections 31-10.7.5, Public Hearings; and 43-5.2, Site Plan Review and Hearings

Dear Commissioners:

Thank you for notifying this office of the revised proposed zoning text amendments noted above. Acting as the Commissioner's staff, our office has reviewed the amendments for consistency with the policies and standards of the Connecticut Coastal Management Act (CCMA), and we note the following comments for the Commission's consideration:

- Modification of Language and Development of Two or More Distinct Sections within Section 43-5.2 – Section 43-5.2 regulates both the site plan review process and the requirement for public hearings for such applications. As proposed, the zoning text changes appear confusing as to what activities would be exempt from the site plan review process as a whole, and what regulated activities would automatically be subject to the public hearing portion of the process. This uncertainty as to what is exempt from the overall site plan review process versus what regulated activity would simply not automatically require a public hearing may cause confusion on the behalf of potential applicants. Such confusion could potentially increase non-compliance with the local site plan review process with the CCMA.

The Commission may want to consider revising the proposed language and developing two or more distinct sections under Section 43-5.2 that would help clarify the intent of this section. The first section could list out the specific uses/activities, as consistent with Section 22a-109 (b), that the Town exempts from its coastal site plan review process. The second proposed section could focus on the uses and activities required to submit a site plan application but would be exempt from the required public hearing portion of the local coastal site plan review process.

The Commission is encouraged to maintain the existing provision of Section 43-5.2 that states the P&Z Commission, at its discretion, may hold a public hearing on a coastal site plan review application even if it would otherwise be exempt from said requirement. In addition, DEEP suggests the Commission include such language that is consistent with Section 22a-109 (b) (4) and (7), since such activities cannot be exempt from a local site plan review process.

Westport Proposed Zoning Text Review  
Text Amendment #779  
February 2020

Please be advised that this consistency determination was based on coastal management considerations only, and does not necessarily reflect other municipal planning and zoning considerations that may apply. These comments are made in response to the review requirement contained in Section 22a-104(e) of the Connecticut General Statutes, which requires that notification be sent to the Commissioner of Energy and Environmental Protection at least 35 days prior to the commencement of the public hearing. Once notified, our office is responsible for reviewing the proposal's consistency with the policies of Section 22a-92 and the criteria of Section 22a-102(b) of the CCMA.

Should you have any questions regarding this letter, please feel free to contact me at (860) 424-3779 or by email at karen.michaels@ct.gov.

Sincerely,



Karen A. Michaels  
Environmental Analyst III  
Land and Water Resources Division

KAM/kam

cc: K. Michaels, DEEP  
Westport Coastal File

**Young, Mary**

---

**Subject:** FW: Proposed Amendment

-----Original Message-----  
From: Trianovich, Amanda <atrianovich@westportct.gov>  
Sent: Monday, March 9, 2020 12:58 PM  
To: Young, Mary <maryyoung@westportct.gov>  
Subject: FW: Proposed Amendment

**RECEIVED**  
**MAR 09 2020**  
**WESTPORT P. & Z. C.**

Good Afternoon Mary,

Please see below support letter for pending application PZ-20-00139, Text Amendment # 779 Modify P&Z review process for certain Coastal Site Plan applications. I have printed the letter and added it to the file. Please let me know if you would like me to forward it on to the Commission.

Thanks!

Amanda Trianovich  
Administrative Assistant II  
Planning & Zoning Department  
(203) 341 1079

-----Original Message-----  
From: Lawrence Weisman <weishome@optonline.net>  
Sent: Saturday, March 7, 2020 4:16 PM  
To: Planning and Zoning <PANDZ@westportct.gov>  
Subject: Proposed Amendment

CAUTION: This email originated from outside of the Town of Westport's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I support the proposed amendment which is a reasonable and measured procedural change which streamlines the approval process and reduces the burden on the applicant.  
For the same reasons, I would like the committee to consider an amendment dispensing with the requirement that there be a public hearing for 3 lot subdivisions.  
Larry

Sent from my iPad

**Young, Mary**

---

**Subject:** FW: P&Z Process Efficiency Subcommittee, NEXT STEPS

**RECEIVED**

**MAR 09 2020**

**WESTPORT P. & Z. C.**

**From:** Rick Redniss <rick.redniss@rednissmead.com>

**Sent:** Saturday, March 7, 2020 3:32 PM

**To:** Young, Mary <maryyoung@westportct.gov>

**Cc:** wachilles@aol.com; Mel Barr <barrplan@earthlink.net>; Rick Benson <rick.rbbensonco@gmail.com>; Bernheim, Eric D. (bernheim@halloransage.com) <bernheim@halloransage.com>; Kenneth Bernhard <kbernhard@cohenandwolf.com>; Ron Corwin <ron@roncorwin.com>; Ellie Lowenstein <lelowenstein@gmail.com>; M Boyd <boyd.cthh@gmail.com>; Peter Cadoux <peter@cadouxia.com>; Lawrence Weisman <weishome@optonline.net>; Michael Calise <settlors.traders@gmail.com>; Frederick Hoag <rick@fwharch.com>; Mandell, Matthew I. <matthew@westportD1.com>; Robin Tauck <rtauck@robintauck.com>

**Subject:** Re: P&Z Process Efficiency Subcommittee, NEXT STEPS

**CAUTION:** This email originated from outside of the Town of Westport's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I support the proposed amendment for the stated reasons in the application.

Over the years in multiple towns the intent of the CAM act is well implemented via administrative review.

With minor exceptions that usually involve private interests not intended by the act the holding of a public hearing is unnecessary, inefficient, and unfair to homeowners who have to deal with coastal related issues.

Thank you

On Mar 6, 2020, at 6:20 PM, Young, Mary <[maryyoung@westportct.gov](mailto:maryyoung@westportct.gov)> wrote:

I am writing to you as you requested to **"STAY CONNECTED"** with the efforts of the P&Z Process Efficiency Subcommittee.

**REMINDER: Text Amendment #779 is pending before the P&Z Commission and is scheduled for review at the March 19, 2020 P&Z Public Hearing.**

See attached:

1. Legal Notice;
2. Proposed Text;
3. Explanatory Statement; and
4. Preview of the Press Release that will be sent out at the end of next week in advance of the March 19 meeting.

**Love it? Hate it? Either way, if you want your voice heard please consider sending comments to [pandz@westportct.gov](mailto:pandz@westportct.gov) and get your comments on the record and avoid congregating in the auditorium while we all continue to learn how best to stay safe with coronavirus concerns. I promise you the Commissioners read EVERY email received!**

Thanks for your interest and participation!