

# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Summer 2021

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## HISTORICALLY BUSY STATE LEGISLATURE PASSES NUMEROUS BILLS AFFECTING ZONING

Taking advantage of the pandemic and its associated lock-down protocols, the State Legislature passed more laws applicable to zoning than have been done in its prior 25 years. While many more bills were considered, only those discussed in this newsletter actually became law. The Federation finds it troubling that the legislature, during a pandemic, would seek to fundamentally change zoning when the ability of the public to participate in the process was severely compromised. Below is a summary of the new laws.

### I. ACCESSORY APARTMENTS

State imposed zoning regulations in regard to accessory apartments was part of an omnibus piece of legislation known as Public Act 21-29. This lengthy new law amended Sec. 8-2 of the Connecticut General Statutes by adding definitions for certain types of multi-family housing and by greatly changing how accessory apartments are regulated.

As of January 1, 2022, zoning regulations must designate locations or zoning districts where accessory apartments are allowed. Zoning regulations must also permit, as of right, at least one accessory apartment on any single-family lot and the apartment

cannot be required to be affordable housing. In addition, zoning regulations cannot impose setbacks, lot size, lot frontage or lot coverage requirements greater than that required for a single-family home. These limitations on local control also include landscaping, height and architectural standards, none of which can exceed those required for a single-family home.

It appears that the only limits placed on accessory apartments from germinating in every single-family home is if the home is serviced by a well or private sewage system. Where there is a public sewer system available, the municipal sewer district or WPCA cannot consider an accessory apartment to be a new residential use unless the accessory apartment is part of a newly constructed single-family dwelling.

Commissions have until January 1, 2023 to amend their zoning regulations to comply with this new law. Failure to do so renders their existing accessory apartment regulations void and the content of Public Act 21-29 as their applicable regulation.

Fortunately, an opt-out provision was included in this legislation. In order to opt-out of these accessory apartment state mandates, a Commission and its town's legislative body must act before January 1, 2023. First, by a 2/3 vote of the Commission, a motion to opt-out must be approved. The public hearing process set forth in Connecticut General Statutes Sec. 8-7d must be followed.



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Once a Commission has made its decision to opt-out of the accessory apartment provisions of PA 21-29, its municipal legislative body must act, by a 2/3 vote, to opt-out.

## II. RECREATIONAL CANNABIS

The 2021 Special Session of the State Legislative Assembly saw the passage of a law which decriminalizes the sale and use of marijuana. It should be noted that under Federal Law, these activities are still illegal. This new law, known as Public Act 21-1, allows for the operation of 'Cannabis Establishments' which are defined as: "a producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, food and beverage manufacturer, product manufacturer, product packager".

Under this new state law, a municipality may, by amending its zoning regulations or by adopting a local ordinance, do the following: prohibit cannabis establishments, regulate such establishments by adopting reasonable restrictions regarding the hours of operation, signage and/or establish restrictions on the proximity of cannabis establishments to a church, school or charitable institution. The regulation can require that a special exception is needed for a retailer or micro-cultivator of cannabis. If a municipality fails to adopt a regulation or ordinance, then cannabis establishments are to be treated the same as any similar use.

In a similar fashion as for liquor stores, only a certain number of cannabis establishments can be approved for any given municipality. At present, only one cannabis retailer and one cannabis micro-cultivator can be approved for every 25,000 residents. On or after July 1, 2024, the State's Department of Consumer Protection may change this residency number.

## III. SPECIAL PERMITS

Public Act 21-29's amendment to Sec. 8-2 of the General Statutes eroded a commission's authority to deny an application for a special exception. Long standing law held that such an application could be denied solely on the basis that the proposed use would not be in character with the surrounding neighborhood. The term 'character' has now been stricken from zoning law and been replaced with 'physical site characteristics of the district'. These characteristics must be set forth in the regulations by 'clear and explicit physical standards for site work and structures.' One suspects that this is a push to adopt what is known as a form-based code. Thus, such codes may provide a guide as to the level of detail needed to satisfy this new standard.

## IV. PARKING SPACES

Parking regulations must now comply with the new standards found in PA 21-



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29. Only one parking space can be required for a one-bedroom dwelling unit and no more than two parking spaces for a dwelling with two or more bedrooms. However, a municipality can choose to opt out of this state mandated parking regulation by following this process: First, by a 2/3 vote of the Commission, a motion to opt-out must be approved. The public hearing process set forth in Connecticut General Statutes Sec. 8-7d must be followed. Once a Commission has made its decision to opt-out of the accessory apartment provisions of PA 21-29, its municipal legislative body must act, by a 2/3 vote, to opt-out.

## V. AFFORDABLE HOUSING

Pursuant to Connecticut General Statutes Sec. 8-3j as amended by PA 21-29, municipalities are required to adopt, if they had not already done so, or amend an affordable housing plan. The plan is to be submitted to the Secretary of the Office of Policy and Management no later than June 1, 2022. This state law has been amended to allow the affordable housing plan to be incorporated into the municipality's plan of conservation and development if such plan is due on or before June 1, 2022.

Once adopted, the plan is to be amended at least every 5 years and the amended plan submitted to the Secretary of the Office of Policy and Management. Public meetings can be held on the

adoption and amendment of the plan. In addition to public meetings, public hearings can be held as well. Notice of any hearing must be posted at least 35 days prior thereto. The amendment to Sec. 8-3j states only that notice be posted on the municipality's website. However, it is recommended that the procedure set forth for public hearings in Sec. 8-7d be followed as well.

## VI. OUTDOOR DINING

A recently enacted State Law, which was part of the 790-page budget bill, mandates that all municipalities allow outdoor dining as an accessory use to a restaurant. Outdoor dining is to be permitted as-of-right subject only to site plan review in order to determine compliance with zoning requirements as well as the requirements in this new law. This state law does provide that an application for outdoor dining can be denied if it would result in the expansion of a nonconforming use.

Outdoor dining must be permitted to take place on sidewalks which abut the principal restaurant use. However, a pathway not less than 4' wide must be maintained that extends the length of the lot upon which the use is located and the pathway must comply with any requirements of the Americans with Disabilities Act [42 U.S.C. 12101]. The use of sidewalks is subject to any reasonable conditions that can be imposed by the municipal official



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charged with issuing right-of-way or obstruction permits.

In addition, outdoor dining is to be permitted on off-street parking spaces associated with the restaurant use even if these spaces are required by the zoning regulations. Lots, yards and open spaces that abut the principal use can also be used for outdoor dining as long as the zoning district in which the outdoor dining will occur permits restaurant uses. It should be noted that outdoor dining must be allowed to take place until 9:00 p.m. Zoning regulations may permit a later closing time.

## VII. EXPIRATION OF PERMITS

Approvals for various land use applications have been extended in order to take account of the COVID-19 pandemic. For certain site plans, subdivisions and wetlands permits, the time their approvals remain valid has been greatly extended. These extensions apply only to those approvals made on or after July 1, 2011 but prior to July 1, 2021 and that the approvals have not expired prior to March 20, 2020.

For a site plan that is for fewer than 400 units, the deadline for expiration has been extended to 14 years from the date of approval. An extension of an additional 5 years can be granted by the Commission.

For a subdivision, a similar time period has been imposed. An approval is valid for 14 years from the date of

approval with a possible extension of 5 more years. If the subdivision is for 400 or more units, the approval period is 19 years.

For inland wetlands permits, the approval period has also been extended to 14 years from the date of approval with another 5 years possible.

## VIII. LAND USE TRAINING

Connecticut General Statutes Sec. 8-3(e) authorizes a zoning commission or combined planning and zoning commission to appoint any person as its enforcement official. Starting on January 1, 2023, a commission can only appoint a person who has been certified by the Connecticut Association of Zoning Enforcement Officials.

Zoning enforcement officials are not the only ones who have to go back to school for training. Again, starting January 1, 2023, every member of planning commission, zoning commission, combined commission and zoning board of appeals, must complete 4 hours of training by January 1, 2024. After that date, the 4 hours of training must be completed every two years.

The Office of Policy and Management will be providing guidelines for training by January 1, 2022. Beginning March 1, 2024, each commission must report annually to its municipal legislative body whether this required training has taken place. This



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new law does not provide a penalty for noncompliance.

## IX. APPLICATION FEE LIMITS

Connecticut General Statutes Sec. 8-1c provides the authority for land use commissions to impose application fees. In addition to an established fee, an applicant could also be required to "pay the cost of reasonable fees associated with any necessary review by consultants with expertise in land use of any other technical aspects of the application."

This law has now been amended to require that any such application fee be "accounted for separately" and not be used to pay salaried employees of the town. In addition, any unspent portion of the application fee must be returned to the applicant not later than 45 days after the completion of the technical review.

The schedule of application fees cannot be greater for affordable housing projects or multi-family buildings of 4 or more units than for other residential dwellings, for example on a per unit basis or square footage basis.

## X. REMOTE MEETINGS

The Freedom of Information Act, codified as Connecticut General Statutes Sec. 1-200 et seq., has been amended to allow public meetings and hearings of municipal agencies to be held fully or partially by remote electronic means as

well as in person as long as certain requirements are met. These changes to the FOIA remain in effect until April 30, 2022.

Before a public meeting can be held through electronic means, proper notice must be given. This is done by providing direct notice that the meeting will be held fully or partially by electronic means to each member of the municipal agency at least 48 hours before the meeting is to take place. This same notice must also be posted either in the town clerk's office or the agency's regular office and also on the town's website. These notices are in addition to the usual requirements for posting a meeting agenda. The agenda must include directions so that the public can attend the meeting and provide comment via electronic means.

If a municipal agency decides to hold a meeting solely or partially by electronic means, it must provide certain accommodations to the public. If a member of the public makes a written request to attend by electronic means, the agency must provide a physical location and the necessary electronic means for doing so. Said request must be provided at least 24 hours before the meeting is to take place. Any member of the municipal agency must be allowed to participate by electronic means. However, the meeting does not need to be continued due solely to an interruption of the electronic connection to the remote member unless the loss of



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this member results in the loss of a quorum.

When a meeting being held fully or partially by electronic means is interrupted by a failure, degradation or disconnection of electronic communication and the Chairman determines that this has made the electronic means unacceptable to the conduct of the meeting or the electronic connection to a member needed to constitute a quorum has similarly been degraded or disconnected, the Chairman can resume the meeting not less than 30 minutes nor more than 2 hours from the chairman's determination. The resumed meeting can be done solely in person if a quorum exists or solely or partially by electronic means. If the meeting is resumed, notice of the resumption should be posted on the agency's website. Similarly, if the meeting is to be continued to a later date, this information should be posted in a similar fashion. The state law recommends that at the start of any meeting held partially or fully by electronic means, the agency should announce its procedures for when the degradation or failure of electronic communications cause the interruption of a meeting.

Any meeting held fully or partially by electronic means must be transcribed or recorded and such recording or transcription posted on the agency's website and made available in the agency's office or regular place of business not more than 7 days after the

meeting and maintain them in place for 45 days thereafter. Any vote taken at a meeting during which any member participates by electronic means shall be taken by roll call, unless the vote is unanimous. The minutes of the meeting shall record a list of members that attended such meeting in person and a list of members that attended such meeting by means of electronic equipment.

## MEMBERSHIP IN THE FEDERATION IMPORTANT NOW MORE THAN EVER

During this past legislative session, the Federation stood practically alone in defending local zoning authority from increased State controls and mandates. This drive to consolidate zoning authority under state and regional authorities appears likely to continue. That is why your continued membership is vital. If you have let your membership lapse, please contact us at [cfpza.live.com](http://cfpza.live.com) and we can send you a membership form.

## ABOUT THE EDITOR

*Steven Byrne is a practicing attorney with an office in Farmington, Connecticut. A principle in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.*



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## **SUMMER WEBINAR 2021**

This past legislative session witnessed the greatest changes to zoning law in a generation. While many bills did not become law, many others did. Accessory apartments, affordable housing, mandated education, marijuana and remote public meetings are all part of this avalanche of new laws.

The Federation is presently planning to host a webinar this August that will discuss the latest legislation enacted by the State which effects zoning and what you need to do to comply with them.

So, please join us this August for what will be an informative webinar. The date and time of the webinar will be posted on our website [[www.cfpza.org](http://www.cfpza.org)]. An invitation to this webinar will be emailed to all members on our email list.

Included in the notice will be the webinar program as well as who will be presenting.

## *Get on Our Email List And*

### *Make the Most of Your Membership*

*Send an email to [cfpza@live.com](mailto:cfpza@live.com) and we will add you to our email list. This will ensure that you receive timely notices of any future webinars as well as other events and newsletters.*

## **MEMBERSHIP DUES**

Notices for this year's annual membership dues were mailed March 1, 2021. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly. It is important now, more than ever, for the Federation to have the resources to participate in the legislative process and protect your interests.

Increased State oversight of zoning as well as the encroachment of regionalization efforts threaten local control over land use issues. This legislative trend is likely to only increase. Your continued membership is vital if the Federation is to have any success against these continued efforts to take away local authority.