

CONNECTICUT PLANNING



American Planning Association
Connecticut Chapter

Making Great Communities Happen

Government Relations

NEW LEGISLATION 2014

PA 14-100, AN ACT CONCERNING LIABILITY FOR THE GROWING OF RUNNING BAMBOO – This act makes it illegal to have running bamboo (genus *Phyllostachys*) on land within 40' of a property line regardless of when it was planted or if it is contained. DEEP, municipal constables, tree wardens, ZEO's, and WEO's may enforce and institute fines of up to \$100 per day. Modification of PA 13-82. Effective: 6-6-14

PA 14-169, AN ACT CONCERNING THE GRANT OF PROPERTY INTERESTS IN PROPERTY HELD BY DOAG AND DEEP AND THE ESTABLISHMENT OF A PUBLIC USE AND BENEFIT LAND REGISTRY – This act allows DEEP and DOAG to place conservation or preservation restrictions on any lands owned by the respective departments. Further, DEEP may designate DEEP-owned property as "lands of public use and benefit" meaning that it is used for conservation, public enjoyment, or recreational purposes. The act additionally requires the creation of a publicly-accessible GIS identifying such "public use and benefit" lands and showing ownership, level of protection, deeds, easements, surveys, etc. Effective: 6-11-14

PA 14-217 Sec. 222, MORATORIUM ON AFFORDABLE HOUSING (CGS § 8-30g) APPEALS IN MILFORD, ETC. – This act will institute a one year moratorium on the affordable housing appeals procedure in the City of Milford and potentially other communities with between 6-10% affordable housing units and that have been involved in an affordable housing application since Nov. 1, 2013. Inserted as a rider in the "Implementer Bill". Effective: Upon passage.

TRACKED BILLS THAT DID NOT PASS

SB 40/SB 94, TWO ACTS CONCERNING THE PUBLICATION OF MUNICIPAL LEGAL NOTICES IN NEWSPAPERS – These bills would have allowed municipalities to publish a brief summary of a matter being noticed in a newspaper with a reference to the municipality's Internet web site for additional information in lieu of publication of a full legal notice.

SB 405, AN ACT CONCERNING PUBLIC HEARINGS ON SUBDIVISION APPLICATIONS - This bill would have prohibited municipal planning commissions from holding a public hearing on a subdivision proposal and mandates that commissions shall approve any such proposal that complies with the regulations. CCAPA provided testimony in opposition to this bill.

HB 5507, AN ACT CONCERNING THE APPOINTMENT OF ZONING ENFORCEMENT OFFICIALS, BUILDING OFFICIALS AND FIRE MARSHALS – This bill would have required the chief executive officers of municipalities to appoint zoning enforcement officials in consultation with the zoning commission and would have changed the statutes regarding appointments and terms for Building Officials and Fire Marshals. While the impetus for this change came from a desire to

regionalize municipal services, many feel that CEO's could have conflicts of interest that might inappropriately influence zoning enforcement actions. CCAPA provided testimony in opposition to the changes to Sec. 8-3(e) but supports regional service delivery.

HB 5511, AN ACT GRANTING A MORATORIUM FROM THE AFFORDABLE HOUSING LAND USE APPEALS PROCESS UPON COMPLETION OF AN EXISTING INCENTIVE HOUSING DEVELOPMENT

– This bill would have allowed a municipality that has completed a sixteen unit incentive housing development to enact a two year moratorium on all affordable housing appeals. CCAPA echoed the comments of the CT Partnership for Strong Communities in opposing this bill.

SB 117, ACT AUTHORIZING MUNICIPALITIES TO MODIFY ZONING STANDARDS (AKA AN ACT AUTHORIZING FLEXIBLE ZONING)

– This bill was brought forward by CCAPA as a legislative fix to MacKenzie v. Monroe, a recent CT Appellate Court decision indicating that zoning commissions have no statutory authority to enact flexible zoning regulations. The CCAPA Executive Committee voted to pursue a legislative fix after concerns were raised regarding the court's decision. The proposed fix would have inserted a new subsection (d) in CGS 8-2 outlining that bulk or dimensional standards could be modified with a $\frac{3}{4}$ vote of the Commission provided that the applicant submitted the request in writing at the time the application was filed. This bill did not make it out of the Planning and Development Committee.

Many zoning regulations currently authorize modifications to zoning standards, usually under certain circumstances. A simple text search for “modify”, “waive”, or “reduce” in your favorite set of zoning regulations will usually yield a few such examples. In the MacKenzie decision, any such discretionary authority (whether invoked via special permit or otherwise) is only authorized by a zoning board of appeals through the variance process.

CCAPA collaborated on the bill with the CT Home Builders and Remodelers Association which has a similar position on policy; however, there is no shortage of concerns for the proposal. While many planners have expressed support for limited flexibility such as would be authorized by SB 117, others believe it is not appropriate for zoning commissions to flex zoning standards, citing the uniformity requirement in CGS § 8-2 (a), the existing variance process, and the ability to modify zoning regulations through a normal zone text change. Legal queries include concern for how neighbors would be properly noticed and concern for abuse influenced by politics or financial matters.

Proponents argue that flexible zoning regulations with clearly described criteria serve a valuable and legitimate function by allowing for better building and site design (providing a “safety relief valve” when the standard regulations create an undesired outcome), allowing for more opportunity for collaboration between developers and commissions, avoiding the need for a variance and proof of hardship, and by being a useful tool in the implementation of comprehensive planning goals (few POCD's emphasize uniformity as a planning goal). They also cite a strong policy-oriented correlation between the idea of flexible zoning and CGS § 8-26 Waivers of Certain Subdivision Regulation Requirements.

What do you think? Take the CCAPA member feedback poll at Hot Topics!