



# House of Representatives

General Assembly

**File No. 432**

*January Session, 2007*

Substitute House Bill No. 7186

*House of Representatives, April 10, 2007*

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING CLUSTER DEVELOPMENT ZONES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2007*) As used in this section and  
2 sections 2 to 5, inclusive, of this act:

3 (1) "Blighted property" means any structure or vacant or  
4 unimproved lot or parcel (A) that has significant unremedied building,  
5 housing or health code violations; (B) that has a high vacancy rate or is  
6 abandoned, vacant or unoccupied; (C) for which taxes are delinquent;  
7 or (D) that has been deemed a public nuisance under any provision of  
8 the general statutes or any local ordinance;

9 (2) "Cluster development" means a residential or mixed-use  
10 development (A) that is proposed or located within an approved  
11 cluster zone, and (B) in which not less than twenty per cent of the  
12 dwelling units will be conveyed subject to a cluster restriction  
13 requiring that, for at least thirty years after the initial occupancy of the

14 development, such dwelling units shall be sold or rented at, or below,  
15 prices which will preserve the units as housing for which persons pay  
16 thirty per cent or less of their annual income, where such income is less  
17 than or equal to eighty per cent or less of the median income;

18 (3) "Cluster restriction" means a deed restriction, covenant, zoning  
19 regulation, site plan approval condition, subdivision approval  
20 condition or affordability plan constituting an obligation with respect  
21 to the restrictions on household income, sale or resale price, rent and  
22 housing costs required by section 2 of this act, enforceable for thirty  
23 years and recorded on the land records of the municipality where the  
24 housing is located;

25 (4) "Cluster zone" means a zone adopted by a zoning commission  
26 pursuant to section 2 of this act, as an overlay to one or more existing  
27 zones;

28 (5) "Developable land" means the area within the boundaries of an  
29 approved incentive housing zone, including blighted property and  
30 land used for parking that exceeds the requirement for parking for the  
31 underlying zone, but excluding: (A) Land already committed to a  
32 public use or purpose, whether publicly or privately owned; (B)  
33 existing parks, recreation areas and open space that is dedicated to the  
34 public or subject to a recorded conservation easement; (C) land  
35 otherwise subject to an enforceable restriction on or prohibition of  
36 development; and (D) wetlands or watercourses as defined in chapter  
37 440 of the general statutes;

38 (6) "Median income" means, after adjustments for family size, the  
39 area median income as determined by the United States Department of  
40 Housing and Urban Development for the municipality in which an  
41 approved incentive housing zone is located;

42 (7) "Secretary" means the Secretary of the Office of Policy and  
43 Management;

44 (8) "Zoning commission" means a municipal agency designated or  
45 authorized to exercise zoning powers under chapter 124 of the general  
46 statutes or a special act, and includes an agency that exercises both  
47 planning and zoning authority; and

48 (9) "Zero lot line" means a displacement of a structure toward one  
49 lot line after the prescribed height and bulk of the structure have been  
50 calculated from setback and height regulations, leaving little space for  
51 side yards.

52 Sec. 2. (NEW) (*Effective July 1, 2007*) (a) The zoning commission of  
53 each municipality may establish a cluster development zone as part of  
54 the zoning regulations adopted under section 8-2 of the general  
55 statutes or any special act.

56 (b) A cluster development zone shall be an overlay zone and shall  
57 satisfy the following requirements:

58 (1) To qualify for a waiver under subsection (c) of this section, the  
59 area of the cluster development zone shall be at least fifty per cent of  
60 the developable property of the municipality, as determined by the  
61 Secretary of the Office of Policy and Management. In determining the  
62 amount of developable land, the secretary shall take into consideration  
63 the plan of conservation and development of the municipality adopted  
64 under section 8-23 of the general statutes.

65 (2) The regulations of the zone shall permit, as of right, cluster  
66 development.

67 (3) The minimum density of the cluster development zone shall be  
68 twelve units per acre.

69 (4) The minimum densities prescribed in subdivision (3) of this  
70 subsection shall be subject only to site plan or subdivision review and  
71 shall not be subject to review for a special permit or special exception.

72 (5) The size of lots in the cluster development zone shall be  
73 determined by the municipality.

74 (6) The regulations of a cluster zone may allow for a mix of  
75 business, commercial or other nonresidential use provided such uses  
76 are consistent with the required as of right residential uses and  
77 densities.

78 (c) The affordable housing procedure established pursuant to  
79 section 8-30g of the general statutes may be waived by the  
80 Commissioner of Economic and Community Development if a  
81 municipality with a cluster development zone under sections 1 to 5,  
82 inclusive, of this act that authorizes housing density as provided in  
83 subdivision (3) of subsection (b) of this section, submits documentation  
84 to the commissioner sufficient for the commissioner to determine that  
85 the number of restricted housing units that could be constructed in  
86 such cluster development zone is insufficient when added to the  
87 existing affordable housing stock of the municipality to enable the  
88 municipality to meet the criteria for affordable housing provided for in  
89 subsection (k) of section 8-30g of the general statutes.

90 (d) Upon application to the Commissioner of Economic and  
91 Community Development by a municipality with a cluster  
92 development zone under sections 1 to 5, inclusive, of this act that does  
93 not meet the criteria for affordable housing provided for in subsection  
94 (k) of section 8-30g of the general statutes, if such criteria could be met  
95 by cluster development in a cluster development zone that is less than  
96 fifty per cent of the developable property of the municipality or by a  
97 housing density of less than twelve units per acre, then the  
98 commissioner may waive the size of zone or the housing density may  
99 be reduced to the size and density necessary to meet such criteria.

100 (e) A zoning commission may modify, waive or delete dimensional  
101 standards contained in the zone or zones that underlie a cluster  
102 development zone in order to support the minimum or desired  
103 densities, mix of uses or physical compatibility. Standards subject to  
104 modification, waiver or deletion include, but shall not be limited to,  
105 building height, setbacks, lot coverage, parking ratios and road design  
106 standards.

107 (f) An applicant for site plan or subdivision approval to construct a  
108 cluster development within an approved zone may require for the  
109 development, through a cluster development restriction, that (1) not  
110 less than twenty per cent of the total proposed dwelling units be  
111 subject to the restriction; (2) such dwelling units shall be sold or rented  
112 at prices which will preserve the units as housing for which persons  
113 pay thirty per cent or less of their annual income, where such income is  
114 less than or equal to eighty per cent or less of the median income; or (3)  
115 the duration of the restriction may be longer than thirty years. An  
116 application for approval of a cluster development may not be denied  
117 by the commission on the basis that the proposed cluster development  
118 restriction contains one or more of these provisions set forth in this  
119 subsection.

120 (g) The provisions of sections 1 to 5, inclusive, of this act shall not be  
121 construed to affect the power of a zoning commission to adopt or  
122 amend regulations under chapter 124 of the general statutes or any  
123 special act.

124 Sec. 3. (NEW) (*Effective July 1, 2007*) A zoning commission, at the  
125 time of and as part of its adoption of regulations for a cluster  
126 development zone, may adopt design standards for housing  
127 developments within such zone. An application for a proposed cluster  
128 development in a cluster development zone shall not be subject to  
129 review under section 8-3c of the general statutes, but shall be subject to  
130 site plan review under subsection (g) of section 8-3 of the general  
131 statutes.

132 Sec. 4. (NEW) (*Effective July 1, 2007*) (a) A zoning commission, at the  
133 time of and as part of its adoption of regulations for a cluster  
134 development zone, may adopt design standards for cluster  
135 developments within such zone. Such design standards may (1) ensure  
136 that construction within the cluster development zone is  
137 complementary to adjacent and neighboring buildings and structures  
138 and (2) address the scale and proportions of buildings; site coverage;  
139 alignment, width and grade of streets and sidewalks; type and location

140 of infrastructure; location of building and garage entrances; off-street  
141 parking; protection of significant natural site features; location and  
142 design of open spaces; signage; and setbacks and buffering from  
143 adjacent properties. Design standards shall allow for zero lot lines for  
144 individual dwelling units but the development shall be subject to  
145 setback and yard requirements.

146 (b) A design standard shall not be adopted if such standard will  
147 unreasonably impair the economic or physical feasibility of  
148 constructing housing at the minimum densities and with the required  
149 cluster restriction as provided in sections 1 to 5, inclusive, of this act.

150 Sec. 5. (NEW) (*Effective July 1, 2007*) (a) A zoning commission shall  
151 prescribe, consistent with the provisions of this section and sections 1  
152 to 4, inclusive, of this act, the form of an application for approval of a  
153 cluster development. Receipt and processing of applications shall  
154 follow the time periods and procedures of chapter 124 or chapter 126  
155 of the general statutes as applicable. A zoning commission or its agent  
156 is authorized, to the extent allowed by the Freedom of Information  
157 Act, to conduct one or more preliminary or preapplication planning or  
158 workshop meetings with regard to a cluster development zone or  
159 development. A zoning commission may conduct a public hearing in  
160 connection with an application for site plan or subdivision approval of  
161 a cluster development.

162 (b) The regulations of a cluster development zone may require the  
163 applicant for approval of a cluster development to pay the cost of  
164 reasonable consulting fees to provide peer review of the technical  
165 aspects of the application for the benefit of the zoning commission.  
166 Such fees shall be held in a separate account and used only for  
167 expenses associated with the technical review of the application by  
168 consultants who are not otherwise salaried employees of the  
169 municipality or the zoning commission, and any surplus remaining,  
170 including any interest accrued, shall be returned to the applicant  
171 within forty-five days of the completion of such technical review.

172 (c) Cluster development zone regulations may provide for the  
173 referral of a site plan or subdivision application for comment to other  
174 agencies, boards or commissions of the municipality. If a site plan or  
175 subdivision application is referred to another agency, board or  
176 commission, such agency, board or commission shall provide any  
177 comments within the time period contained in section 8-7d of the  
178 general statutes that is applicable to such application.

179 (d) A cluster development shall be approved by the zoning  
180 commission subject only to conditions that are necessary to (1) ensure  
181 substantial compliance of the proposed development with the  
182 requirements of the cluster zone regulations, design standards and, if  
183 applicable, subdivision regulations; or (2) ensure compliance with state  
184 and environmental laws and regulations adopted thereunder. An  
185 application may be denied only on the grounds that: (A) The  
186 development does not meet the requirements set forth in the cluster  
187 zone regulations; (B) the applicant failed to submit information and  
188 fees required by the regulations and necessary for an adequate and  
189 timely review of the design of the development or potential  
190 development impacts; or (C) it is not possible for the development to  
191 be constructed in a manner to comply with state and environmental  
192 laws and regulations adopted thereunder.

193 (e) The duration and renewal of an approval of a cluster  
194 development shall be governed by subsection (i) of section 8-3,  
195 subsection (j) of section 8-3, section 8-26c or section 8-26g of the general  
196 statutes, as applicable. The time to complete the work approved shall  
197 be extended (1) by the time required to adjudicate to final judgment  
198 any appeal from a decision of the commission on a cluster  
199 development site plan or subdivision plan or any required coordinate  
200 permit; (2) by the zoning commission if the applicant is actively  
201 pursuing other permits needed for the development; (3) if there is  
202 other good cause for the failure to complete such work; or (4) as  
203 provided in an approval for a multiphase development.

204 (f) Any person whose application for a cluster development zone

205 application is denied or is approved with restrictions which have a  
 206 substantial adverse impact on the viability of the development, may  
 207 appeal such decision to the Superior Court in compliance with the  
 208 provisions of section 8-8 of the general statutes provided (1) upon  
 209 motion made to the court by the defendant municipality, zoning  
 210 commission, planning commission or applicant, the court shall order  
 211 each appealing party to post a bond in an amount sufficient to cover  
 212 (A) each moving defendant's anticipated attorney fees and costs for  
 213 defending against the appeal, and (B) if applicable, an applicant's  
 214 anticipated or actual costs to carry and maintain its interest in the  
 215 subject property for a period of one year, as established by affidavit  
 216 filed with the court, which bond shall be forfeited in the event that the  
 217 appealing party does not substantially prevail in the appeal; (2) any  
 218 such appeal, upon motion by any defendant made at any time after the  
 219 return date, shall be transferred from the judicial district to which it is  
 220 returned to the judicial district of New Britain and shall be heard and  
 221 decided by one of the judges designated by the Chief Court  
 222 Administrator under chapter 126a of the general statutes; and (3) any  
 223 such appeal shall be a privileged case in the order of trial, to be heard  
 224 by the court as soon after the return day as is practicable.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2007	New section
Sec. 2	July 1, 2007	New section
Sec. 3	July 1, 2007	New section
Sec. 4	July 1, 2007	New section
Sec. 5	July 1, 2007	New section

**PD**            *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Economic & Community Development	GF - Cost	Potential Minimal	Potential Minimal
Policy & Mgmt., Off.	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:**

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	See Below	See Below	See Below

**Explanation**

Any additional administrative workload incurred by the Department of Economic and Community Development (DECD) due to the waiver procedure in the bill is anticipated to be minimal and within budgeted resources.

The bill requires the Office of Policy and Management (OPM) to determine the developable property of municipalities by considering the municipalities' plan of conservation for the towns that have chosen to adopt cluster development zones and are seeking a waiver from the DECD Commissioner for certain affordable housing appeals. OPM will require additional resources, dependent on the number of towns that choose to adopt these cluster development zones and seek a waiver from DECD.

Since the provisions of the bill with regard to the adoption of cluster zones by municipalities are discretionary, it is anticipated that municipalities which choose to establish cluster zones will do so when resources permit.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis**

**sHB 7186**

***AN ACT CONCERNING CLUSTER DEVELOPMENT ZONES.***

**SUMMARY:**

This bill allows a municipal zoning commission to establish a cluster development zone as part of its zoning regulations. The bill applies to regulations adopted under the statutes or by special act. It specifies requirements for cluster development zone regulations, including that they allow at least 12 units per acre, and permits other regulatory provisions.

The cluster development zones must overlay existing zones. The bill allows the zoning commission to modify, waive, or delete dimensional standards contained in the zones that underlie a cluster development zone in order to support the minimum or desired densities, mix of uses, or physical compatibility. These standards include building height, setbacks, lot coverage, parking ratios, and road design standards.

The bill allows zoning commissions, when they adopt cluster development zone regulations and as part of these regulations, to adopt design standards for housing developments in the zone. An application for a proposed cluster development in the zone cannot be subject to the review that currently applies when a developer needs or desires a special permit, exception, or exemption. But the development is subject to site plan review as provided by current law.

The bill allows the economic and community development commissioner to waive the provisions of the affordable housing appeals law (see BACKGROUND) if a cluster development zone meets certain criteria. It establishes an appeals process for a housing

developer whose application for a cluster development is denied or approved with onerous conditions.

The bill does not affect the ability of a zoning commission to adopt or amend regulations under the statutes or a special act.

EFFECTIVE DATE: July 1, 2007

## **DEFINITIONS**

### ***Cluster Development***

Under the bill, a cluster development is a residential or mixed-use development that is proposed or located in an approved cluster zone, where at least 20% of the dwelling units will be conveyed subject to a cluster restriction. A cluster restriction is a deed restriction, covenant, zoning regulation, subdivision or site plan approval condition, or obligatory affordability plan that restricts household income, sale or resale price, rent, and housing costs as required by the bill. The restriction must require that, for at least 30 years after the development's initial occupancy, the dwelling units will be sold or rented at or below prices that will preserve them as housing for which people pay 30% or less of their annual income, which can be no more than 80% of the median income for the municipality. The restriction must be enforceable for 30 years and recorded on the municipality's land records.

### ***Developable Land***

Under the bill, land is considered developable if it is in an approved incentive housing zone, including blighted property and land used for parking that exceeds the parking requirement for the underlying zone. Developable land includes blighted property, which includes any structure or vacant or unimproved land (1) that has significant unremedied building, housing, or health code violations; (2) that has a high vacancy rate or is abandoned, vacant, or unoccupied; (3) for which taxes are delinquent; or (4) that has been deemed a public nuisance under state or local law.

The following lands are not considered developable: (1) land

already committed to a public use or purpose, whether publicly or privately owned; (2) existing parks, recreation areas, and open space that is dedicated to the public or subject to a recorded conservation easement; (3) land that is otherwise subject to an enforceable restriction on or prohibition of development; and (4) wetlands or watercourses under an inland wetland's commission's jurisdiction.

## **CLUSTER ZONE REGULATION PROVISIONS**

### ***Requirements***

Under the bill, the regulations for the cluster development zone must:

1. permit cluster development as of right, e.g., the municipality cannot require the developer to obtain a variance for such developments;
2. provide for a minimum density of 12 units per acre; and
3. provide that this minimum density is subject only to site plan or subdivision review and not to review for a special permit or special exception.

The municipality must determine the size of lots in the cluster development zone. The regulated zone may allow for a mix of business, commercial, or other nonresidential uses provided they are consistent with the required as-of-right residential uses and densities.

### ***Optional Provisions***

The cluster zone regulations may require the applicant for approval of a cluster development to pay reasonable fees to provide peer review by a consultant of the application's technical aspects for the commission's benefit. The fees must be held in a separate account and used only for expenses associated with the technical review by consultants who are not otherwise salaried employees of the municipality or the zoning commission. Any surplus remaining, including any interest accrued, must be returned to the applicant within 45 days after the review is completed.

The regulations may also provide for referring a site plan or subdivision application for comment to other municipal agencies, boards, or commissions. If an application is referred to another agency, board, or commission, it must provide any comments within the time period contained in current law that applies to such applications.

### **DESIGN STANDARDS**

The bill allows zoning commissions to establish design standards for cluster developments in the zone. The standards may (1) ensure that construction in the zone complements adjacent and neighboring buildings and structures and (2) address the scale and proportions of buildings, site coverage, alignment, width and grade of streets and sidewalks, type and location of infrastructure, location of building and garage entrances, off-street parking, protection of significant natural site features, location and design of open spaces, signage, and setbacks and buffering from adjacent properties. The design standards must allow for zero lot lines for individual dwelling units but the development is subject to setback and yard requirements. Zero lot lines is a zoning technique that allows a structure close to a one lot line, once it has met height and bulk restrictions under a zoning regulation, leaving little space for side yards.

On the other hand, the bill prohibits a design standard that will unreasonably impair the economic or physical feasibility of constructing housing at the minimum densities and with the cluster restrictions required by the bill.

### **WAIVER OF AFFORDABLE HOUSING APPEALS LAW**

The affordable housing appeals law places the burden of proof on a municipality if it denies a proposal to build affordable housing that meets certain criteria. The law does not apply to municipalities where at least 10% of the dwelling units are affordable, as defined by law.

The bill allows the economic and community development commissioner to waive this law for a municipality that does not currently meet the 10% threshold if:

1. the cluster development zone covers at least 50% of the developable land in the municipality, as determined by the Office of Policy and Management (OPM) secretary;
2. the municipality authorizes a housing density of at least 12 units per acre in cluster development zones; and
3. the municipality provides documentation to the commissioner sufficient to allow him to determine that the municipality still could not meet the 10% affordable housing threshold even if all of the affordable housing allowed under the cluster development regulations was built.

Alternatively, the bill allows the commissioner, with regard to a municipality that does not meet the 10% threshold and has adopted a cluster zone, to waive the bill's criteria regarding (1) the size of the cluster development zone or (2) the housing density required in such zones if the 10% threshold could be met by the construction of additional affordable housing in a smaller zone or in less dense developments. It implies that the commissioner can waive the affordable appeals law for such municipalities.

### **APPLICATION APPROVAL PROCESS**

The bill requires a zoning commission to prescribe, consistent with the bill's provisions, an application form approving cluster developments. The current law governing receipt and processing of zoning applications must be applied to applications for cluster developments. A commission or its agent may, to the extent allowed by the Freedom of Information Act, hold one or more preliminary or preapplication planning or workshop meetings regarding a cluster development zone or a cluster development. A commission may conduct a public hearing in connection with an application for site plan or subdivision approval of a cluster development.

A commission must approve a cluster development subject only to conditions that are needed to (1) ensure substantial compliance of the proposed development with the requirements of the cluster zone

regulations, design standards and, if applicable, subdivision regulations or (2) ensure compliance with state and environmental laws and regulations. An application can be denied only on the grounds that:

1. the development does not meet the cluster zone regulations;
2. the applicant failed to submit information and fees required by the regulations that are necessary for an adequate and timely review of the development's design or potential effects; or
3. it is impossible for the development to be constructed in a manner to comply with state and environmental laws and regulations.

A developer of a cluster development in an approved zone who seeks approval of a site plan or subdivision can subject it to a restriction that (1) meets the affordability provisions described above or (2) that runs for more than 30 years. The commission cannot deny such an application because the proposed development restriction contains one or more of these provisions.

The duration and renewal of an approval of a cluster development is subject to laws governing (1) site plan reviews and completion deadlines for work connected with the site plans and (2) completion of subdivisions, as applicable. The deadline to complete the work approved must be extended

1. by the time required to adjudicate to final judgment any appeal from a decision of the commission on a cluster development site plan or subdivision plan or any required coordinate permit;
2. by the zoning commission if the applicant is actively pursuing other permits needed for the development;
3. if there is other good cause for the failure to complete such work; or

4. as provided in an approval for a multiphase development.

## **APPEAL OF DENIALS**

Any person whose housing application for a cluster development zone application is denied or is approved with restrictions that substantially reduce the development's viability can appeal to Superior Court in the same way that other land use cases are appealed. Upon motion by the defendant municipality, zoning commission, planning commission, or the applicant, the court must order each appealing party to post a bond large enough to cover (1) each moving defendant's anticipated attorney fees and costs and (2) if applicable, an applicant's anticipated or actual costs to carry and maintain its interest in the subject property for one year, as established by affidavit filed with the court. The bond is forfeited if the appealing party does not substantially prevail in the appeal.

The appeal is a privileged case in the order of trial, to be heard as soon after the return day as is practicable. Any such appeal, upon motion by any defendant made after the return date, must be transferred from the judicial district where it was returned to the New Britain Judicial District and heard and decided by one of the judges designated by the chief court administrator under the affordable housing appeals law.

## **BACKGROUND**

### ***Affordable Housing Appeals Law***

The affordable housing appeals procedure is a set of rules developers and courts must follow when a developer sues a municipality for rejecting a proposed affordable housing project or a housing project that would include a certain amount of affordable units. Municipalities with less than 10% of their housing stock meeting definitions of affordability under the law are subject to the procedure. As of 2006, 138 municipalities fall into this category.

Under the law, the burden is on the municipality to show that it had to reject the project because (1) it could seriously harm public health

and safety (e. g., create a traffic hazard), (2) the potential harm was greater than the need for affordable housing, and (3) the municipality could not minimize or prevent the harm by making reasonable changes to the proposed project. Normally, when a municipality denies a developer's application, the developer bears the burden of showing that the denial was arbitrary, unwarranted by the facts, did not meet procedural requirements, or otherwise did not meet the law's requirements.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 14    Nay 4    (03/23/2007)