



General Assembly

**Substitute Bill No. 7186**

January Session, 2007

\* \_\_\_\_\_ HB07186PD \_\_\_\_\_ 032307 \_\_\_\_\_ \*

**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	<i>July 1, 2007</i>	New section
Sec. 2	<i>July 1, 2007</i>	New section
Sec. 3	<i>July 1, 2007</i>	New section
Sec. 4	<i>July 1, 2007</i>	New section
Sec. 5	<i>July 1, 2007</i>	New section

**PD**            *Joint Favorable Subst.*