



House of Representatives

General Assembly

File No. 452

January Session, 2015

House Bill No. 5090

House of Representatives, April 7, 2015

The Committee on Planning and Development reported through REP. MILLER, P. of the 36th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT PROHIBITING ZONING COMMISSIONS FROM REQUIRING SPECIAL PERMITS OR SPECIAL EXCEPTIONS FOR USES MADE NONCONFORMING BY NEW ZONING REGULATIONS.

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

1 Section 1. Section 8-2 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) The zoning commission of each city, town or borough is
4 authorized to regulate, within the limits of such municipality, the
5 height, number of stories and size of buildings and other structures;
6 the percentage of the area of the lot that may be occupied; the size of
7 yards, courts and other open spaces; the density of population and the
8 location and use of buildings, structures and land for trade, industry,
9 residence or other purposes, including water-dependent uses, as
10 defined in section 22a-93, and the height, size and location of
11 advertising signs and billboards. Such bulk regulations may allow for
12 cluster development, as defined in section 8-18. Such zoning
13 commission may divide the municipality into districts of such number,

14 shape and area as may be best suited to carry out the purposes of this
15 chapter; and, within such districts, it may regulate the erection,
16 construction, reconstruction, alteration or use of buildings or
17 structures and the use of land. All such regulations shall be uniform
18 for each class or kind of buildings, structures or use of land throughout
19 each district, but the regulations in one district may differ from those
20 in another district, and may provide that certain classes or kinds of
21 buildings, structures or uses of land are permitted only after obtaining
22 a special permit or special exception from a zoning commission,
23 planning commission, combined planning and zoning commission or
24 zoning board of appeals, whichever commission or board the
25 regulations may, notwithstanding any special act to the contrary,
26 designate, subject to standards set forth in the regulations and to
27 conditions necessary to protect the public health, safety, convenience
28 and property values. Such regulations shall be made in accordance
29 with a comprehensive plan and in adopting such regulations the
30 commission shall consider the plan of conservation and development
31 prepared under section 8-23. Such regulations shall be designed to
32 lessen congestion in the streets; to secure safety from fire, panic, flood
33 and other dangers; to promote health and the general welfare; to
34 provide adequate light and air; to prevent the overcrowding of land; to
35 avoid undue concentration of population and to facilitate the adequate
36 provision for transportation, water, sewerage, schools, parks and other
37 public requirements. Such regulations shall be made with reasonable
38 consideration as to the character of the district and its peculiar
39 suitability for particular uses and with a view to conserving the value
40 of buildings and encouraging the most appropriate use of land
41 throughout such municipality. Such regulations may, to the extent
42 consistent with soil types, terrain, infrastructure capacity and the plan
43 of conservation and development for the community, provide for
44 cluster development, as defined in section 8-18, in residential zones.
45 Such regulations shall also encourage the development of housing
46 opportunities, including opportunities for multifamily dwellings,
47 consistent with soil types, terrain and infrastructure capacity, for all
48 residents of the municipality and the planning region in which the

49 municipality is located, as designated by the Secretary of the Office of
50 Policy and Management under section 16a-4a. Such regulations shall
51 also promote housing choice and economic diversity in housing,
52 including housing for both low and moderate income households, and
53 shall encourage the development of housing which will meet the
54 housing needs identified in the state's consolidated plan for housing
55 and community development prepared pursuant to section 8-37t and
56 in the housing component and the other components of the state plan
57 of conservation and development prepared pursuant to section 16a-26.
58 Zoning regulations shall be made with reasonable consideration for
59 their impact on agriculture, as defined in subsection (q) of section 1-1.
60 Zoning regulations may be made with reasonable consideration for the
61 protection of historic factors and shall be made with reasonable
62 consideration for the protection of existing and potential public surface
63 and ground drinking water supplies. On and after July 1, 1985, the
64 regulations shall provide that proper provision be made for soil
65 erosion and sediment control pursuant to section 22a-329. Such
66 regulations may also encourage energy-efficient patterns of
67 development, the use of solar and other renewable forms of energy,
68 and energy conservation. The regulations may also provide for
69 incentives for developers who use passive solar energy techniques, as
70 defined in subsection (b) of section 8-25, in planning a residential
71 subdivision development. The incentives may include, but not be
72 limited to, cluster development, higher density development and
73 performance standards for roads, sidewalks and underground facilities
74 in the subdivision. Such regulations may provide for a municipal
75 system for the creation of development rights and the permanent
76 transfer of such development rights, which may include a system for
77 the variance of density limits in connection with any such transfer.
78 Such regulations may also provide for notice requirements in addition
79 to those required by this chapter. Such regulations may provide for
80 conditions on operations to collect spring water or well water, as
81 defined in section 21a-150, including the time, place and manner of
82 such operations. No such regulations shall prohibit the operation of
83 any family day care home or group day care home in a residential

84 zone. No such regulations shall prohibit the use of receptacles for the
85 storage of items designated for recycling in accordance with section
86 22a-241b or require that such receptacles comply with provisions for
87 bulk or lot area, or similar provisions, except provisions for side yards,
88 rear yards and front yards. No such regulations shall unreasonably
89 restrict access to or the size of such receptacles for businesses, given
90 the nature of the business and the volume of items designated for
91 recycling in accordance with section 22a-241b, that such business
92 produces in its normal course of business, provided nothing in this
93 section shall be construed to prohibit such regulations from requiring
94 the screening or buffering of such receptacles for aesthetic reasons.
95 Such regulations shall not impose conditions and requirements on
96 manufactured homes having as their narrowest dimension twenty-two
97 feet or more and built in accordance with federal manufactured home
98 construction and safety standards or on lots containing such
99 manufactured homes which are substantially different from conditions
100 and requirements imposed on single-family dwellings and lots
101 containing single-family dwellings. Such regulations shall not impose
102 conditions and requirements on developments to be occupied by
103 manufactured homes having as their narrowest dimension twenty-two
104 feet or more and built in accordance with federal manufactured home
105 construction and safety standards which are substantially different
106 from conditions and requirements imposed on multifamily dwellings,
107 lots containing multifamily dwellings, cluster developments or
108 planned unit developments. Such regulations shall not prohibit the
109 continuance of any nonconforming use, building or structure existing
110 at the time of the adoption of such regulations. Such regulations shall
111 not require a special permit or special exception for the continuance of
112 any such nonconforming use, building or structure. Such regulations
113 shall not provide for the termination of any nonconforming use solely
114 as a result of nonuse for a specified period of time without regard to
115 the intent of the property owner to maintain that use. Any city, town
116 or borough which adopts the provisions of this chapter may, by vote of
117 its legislative body, exempt municipal property from the regulations
118 prescribed by the zoning commission of such city, town or borough;

119 but unless it is so voted municipal property shall be subject to such
120 regulations.

121 (b) In any municipality that is contiguous to Long Island Sound the
122 regulations adopted under this section shall be made with reasonable
123 consideration for restoration and protection of the ecosystem and
124 habitat of Long Island Sound and shall be designed to reduce hypoxia,
125 pathogens, toxic contaminants and floatable debris in Long Island
126 Sound. Such regulations shall provide that the commission consider
127 the environmental impact on Long Island Sound of any proposal for
128 development.

129 (c) In any municipality where a traprock ridge, as defined in section
130 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located
131 the regulations may provide for development restrictions in ridgeline
132 setback areas, as defined in said section. The regulations may restrict
133 quarrying and clear cutting, except that the following operations and
134 uses shall be permitted in ridgeline setback areas, as of right: (1)
135 Emergency work necessary to protect life and property; (2) any
136 nonconforming uses that were in existence and that were approved on
137 or before the effective date of regulations adopted under this section;
138 and (3) selective timbering, grazing of domesticated animals and
139 passive recreation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	8-2

PD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 16 \$	FY 17 \$
Various Municipalities	Potential Revenue Loss	Minimal	Minimal

Explanation

The bill prohibits municipal zoning regulations from requiring a special permit or special exception for the continuance of a nonconforming use, building, or structure.

Any municipality which currently requires such permits, and which collects a fee for such permit, may experience a revenue loss as a result of the bill. Any revenue loss is anticipated to be minimal.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of permits issued by municipalities.

OLR Bill Analysis**HB 5090*****AN ACT PROHIBITING ZONING COMMISSIONS FROM REQUIRING SPECIAL PERMITS OR SPECIAL EXCEPTIONS FOR USES MADE NONCONFORMING BY NEW ZONING REGULATIONS.*****SUMMARY:**

This bill prohibits municipal zoning regulations from requiring a special permit or special exception for the continuance of a nonconforming use, building, or structure. Nonconforming uses, buildings, and structures are those that do not conform to the current zoning regulations, but were allowed before the regulations were adopted or changed (e.g., a gas station in a residential zone). Existing law grandfathers the continuance of such uses, buildings, and structures.

EFFECTIVE DATE: October 1, 2015

BACKGROUND***Special Permits and Special Exceptions***

By law, municipal zoning regulations may allow certain classes of buildings or land uses only after the applicant obtains a special permit or special exception. (The terms “special permit” and “special exception” have the same meaning and can be used interchangeably.) The permit or exception (1) is granted by the planning commission, zoning commission, or zoning board of appeals, as designated in the regulations, and (2) must meet the zoning regulations’ standards and conditions to protect public health, safety, convenience, and property values (CGS § 8-2).

Related Case Law

Connecticut courts have ruled that municipalities have the right to regulate a nonconforming use under their police powers as long as the

regulation does not unreasonably interfere with the right to continue it (*Bauer v. Waste Management of Connecticut, Inc.* (234 Conn. 221 (1995)); *Taylor v. Zoning Board of Appeals* (65 Conn. App. 687 (2001))).

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 19 Nay 0 (03/20/2015)