



# House of Representatives

General Assembly

**File No. 377**

February Session, 2018

House Bill No. 5487

*House of Representatives, April 10, 2018*

The Committee on Planning and Development reported through REP. LEMAR of the 96th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE CONTINUANCE OF A  
NONCONFORMING USE, BUILDING OR STRUCTURE.***

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

1 Section 1. Subsection (a) of section 8-2 of the 2018 supplement to the  
2 general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective July 1, 2018*):

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

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

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

85 zone. No such regulations shall prohibit the use of receptacles for the  
86 storage of items designated for recycling in accordance with section  
87 22a-241b or require that such receptacles comply with provisions for  
88 bulk or lot area, or similar provisions, except provisions for side yards,  
89 rear yards and front yards. No such regulations shall unreasonably  
90 restrict access to or the size of such receptacles for businesses, given  
91 the nature of the business and the volume of items designated for  
92 recycling in accordance with section 22a-241b, that such business  
93 produces in its normal course of business, provided nothing in this  
94 section shall be construed to prohibit such regulations from requiring  
95 the screening or buffering of such receptacles for aesthetic reasons.  
96 Such regulations shall not impose conditions and requirements on  
97 manufactured homes having as their narrowest dimension twenty-two  
98 feet or more and built in accordance with federal manufactured home  
99 construction and safety standards or on lots containing such  
100 manufactured homes which are substantially different from conditions  
101 and requirements imposed on single-family dwellings and lots  
102 containing single-family dwellings. Such regulations shall not impose  
103 conditions and requirements on developments to be occupied by  
104 manufactured homes having as their narrowest dimension twenty-two  
105 feet or more and built in accordance with federal manufactured home  
106 construction and safety standards which are substantially different  
107 from conditions and requirements imposed on multifamily dwellings,  
108 lots containing multifamily dwellings, cluster developments or  
109 planned unit developments. Such regulations shall not prohibit the  
110 continuance of any nonconforming use, building or structure existing  
111 at the time of the adoption of such regulations or require a special  
112 permit or special exception for any such continuance. 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. Such regulations  
116 shall not terminate or deem abandoned a nonconforming use, building  
117 or structure unless the property owner of such use, building or  
118 structure voluntarily discontinues such use, building or structure and  
119 such discontinuance is accompanied by an intent to not reestablish

120 such use, building or structure. The demolition or deconstruction of a  
121 nonconforming use, building or structure shall not by itself be  
122 evidence of such property owner's intent to not reestablish such use,  
123 building or structure. Unless such town opts out, in accordance with  
124 the provisions of subsection (j) of section 8-1bb, such regulations shall  
125 not prohibit the installation of temporary health care structures for use  
126 by mentally or physically impaired persons in accordance with the  
127 provisions of section 8-1bb if such structures comply with the  
128 provisions of said section. Any city, town or borough which adopts the  
129 provisions of this chapter may, by vote of its legislative body, exempt  
130 municipal property from the regulations prescribed by the zoning  
131 commission of such city, town or borough; but unless it is so voted  
132 municipal property shall be subject to such regulations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2018</i>	8-2(a)

**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:** None**Explanation**

The bill, which prevents municipalities from requiring a special permit for owners of nonconforming structures, has no fiscal impact. To the extent that municipalities use such special permits, there are no fees connected to them.

**The Out Years:** None

**OLR Bill Analysis****HB 5487****AN ACT CONCERNING THE CONTINUANCE OF A  
NONCONFORMING USE, BUILDING OR STRUCTURE.****SUMMARY**

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

By law, a nonconforming use is a property use that legally exists at the time a zoning restriction prohibiting or limiting it is adopted. Existing law specifies that municipal zoning regulations may not prohibit the continuance of a nonconforming use that was legal when the regulations were adopted or amended.

EFFECTIVE DATE: July 1, 2018

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

“Special permit” and “special exception” are synonymous. Zoning commissions may grant special permits and exceptions pursuant to their general zoning powers (CGS § 8-2).

Special permits and exceptions allow one to use a property in a manner explicitly permitted by the zoning regulations, but subject to conditions not applicable to other uses in the same district. The rationale for special permits and exceptions is that “while certain land uses may be generally compatible with the uses permitted as of right in a particular zoning district, their nature is such that their precise location and mode of operation must be individually regulated” (T. Tondro, *Connecticut Land Use Regulation*, (1992, 2d ed.)).

**Appellate Court Case Law**

In *Taylor v. Wallingford Zoning Board of Appeals*, 65 Conn. App. 687 (2001), the Appellate Court held that municipalities have the right to regulate a nonconforming use (e.g., by requiring a special permit) under their police powers as long as the regulation does not unreasonably interfere with the right to continue the use. But in *MacKenzie v. Monroe Planning and Zoning Commission*, 146 Conn. App. 406 (2013), the court ruled that zoning commissions have no power to grant a special permit or exception for a use, building, or structure that is not in compliance with current zoning regulations.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable

Yea 22    Nay 0    (03/26/2018)