



# The Right to Appeal Land Use Decisions

The Land Use Administrator, acting as the Zoning Enforcement Officer (ZEO), and the land use commissions work hard to make the best decisions possible for all parties involved in land use applications throughout the Town of Thomaston. The ZEO and the commission members make every effort possible to ensure that all regulations and laws are followed; however, you may feel a mistake has been made.

If you are aggrieved by a decision that the ZEO or a land use commission has made, we want you to be aware that you have a right to appeal that decision. The Connecticut General Statutes provide a path to appeal any decision made by the Zoning Enforcement Officer or any land use commission. The purpose of this document is to provide you with information as to how to appeal a zoning decision. The State Statute governing appeals can be found on the reverse side of this document.

## Appealing Commission Decisions

Zoning decisions made by the Planning & Zoning Commission, the Zoning Board of Appeals, and/or the Inland Wetlands & Watercourses Commission are published in the Public Notices section of the *Republican-American*. The day on which these notices appear in the newspaper is the effective date that starts the appeal period. Aggrieved parties may appeal these decisions within 15 days of the effective date. See also §8.8 of the Connecticut General Statutes (see reverse).

### **Commission Decision Appeal Example:**

*XYZ Corporation receives a Site Plan Approval from the Planning & Zoning Commission on December 1<sup>st</sup> in order to build a new retail store on a vacant lot in the General Commercial (GC) Zone. Following State Statute, Building & Land Use staff file a Notice of Decision in the local newspaper on December 5<sup>th</sup>. XYZ Corporation waits until spring to begin construction. Neighbor Butler sees work beginning on March 1<sup>st</sup> and decides to appeal to Superior Court.*

**Q:** Has Neighbor Butler missed the appeal period?

**A:** Yes. Because the Notice of Decision had been published as required on December 5<sup>th</sup>, aggrieved parties must have filed any appeals no later than 15 days after that publication, in this case, December 20<sup>th</sup>. By March 1<sup>st</sup>, there was no legal option for appeal the decision.

## Appealing ZEO Decisions

All zoning decisions made by the Zoning Enforcement Officer (approvals, denials, and enforcement) may be appealed to the Zoning Board of Appeals if filed within the specified 30-day appeal period. Unlike the Commission's decisions, the ZEO's decisions are not published by the Town of Thomaston.

See §8.7 of the Connecticut General Statutes (see reverse).

### **ZEO Decision Appeal Example:**

*Applicant Smith receives a zoning permit approval from the ZEO on November 1<sup>st</sup> to build a house on a vacant lot. With winter approaching, he decides to wait until spring to begin construction. Neighbor Jones sees the bulldozer arrive on March 1<sup>st</sup> and decides to appeal to the Zoning Board of Appeals.*

**Q:** Has Neighbor Jones missed the appeal period?

**A:** Based on court ruling, Neighbor Jones would have 30 days to appeal from the day he was given notice that a zoning permit approval was issued. In the example above, Neighbor Jones was never given notice, so March 1<sup>st</sup> became the effective date of the 30-day appeal period. This appeal could take over 2 years to resolve.

However, in the above example, if Applicant Smith had placed a Notice of Decision in the newspaper as allowed by State Statute, the appeal period would have run out 30 days after the legal notice was published.

**Sec. 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements.** The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. An appeal shall not stay any such order, requirement or decision which prohibits further construction or expansion of a use in violation of such zoning regulations except to such extent that the board grants a stay thereof. An appeal from any other order, requirement or decision shall stay all proceedings in the action appealed from unless the zoning commission or the officer from whom the appeal has been taken certifies to the zoning board of appeals after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed, except by a restraining order which may be granted by a court of record on application, on notice to the zoning commission or the officer from whom the appeal has been taken and on due cause shown. The board shall hold a public hearing on such appeal in accordance with the provisions of section 8-7d. Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals grants or denies any special exception or variance in the zoning regulations applicable to any property or sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision and the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based. Notice of the decision of the board shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person who appeals to the board, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special exception or variance or took such appeal may provide for the publication of such notice within ten days thereafter. Such exception or variance shall become effective upon the filing of a copy thereof (A) in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, and (B) in the land records of the town in which the affected premises are located, in accordance with the provisions of section 8-3d.

**Sec. 8-8. Appeal from board to court. Mediation. Review by Appellate Court.** (a) As used in this section: (1) "Aggrieved person" means a person aggrieved by a decision of a board and includes any officer, department, board or bureau of the municipality charged with enforcement of any order, requirement or decision of the board. In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, "aggrieved person" includes any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board. (2) "Board" means a municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or other board or commission the decision of which may be appealed pursuant to this section, or the chief elected official of a municipality, or such official's designee, in a hearing held pursuant to section 22a-250, whose decision may be appealed. (b) Except as provided in subsections (c), (d) and (r) of this section and sections 7-147 and 7-147i, any person aggrieved by any decision of a board, including a decision to approve or deny a site plan pursuant to subsection (g) of section 8-3 or a special permit or special exception pursuant to section 8-3c, may take an appeal to the superior court for the judicial district in which the municipality is located, notwithstanding any right to appeal to a municipal zoning board of appeals under section 8-6. The appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes. The appeal shall be returned to court in the same manner and within the same period of time as prescribed for civil actions brought to that court. (c) In those situations where the approval of a planning commission must be inferred because of the failure of the commission to act on an application, any aggrieved person may appeal under this section. The appeal shall be taken within twenty days after the expiration of the period prescribed in section 8-26d for action by the commission. (d) Any person affected by an action of a planning commission taken under section 8-29 may appeal under this section. The appeal shall be taken within thirty days after notice to such person of the adoption of a survey, map or plan or the assessment of benefits or damages. (e) The proceedings of the court for an appeal may be stayed by agreement of the parties when a mediation conducted pursuant to section 8-8a commences, provided any such stay shall terminate upon termination of the mediation. (f) Service of legal process for an appeal under this section shall be directed to a proper officer and shall be made as follows: (1) For any appeal taken before October 1, 2004, process shall be served by leaving a true and attested copy of the process with, or at the usual place of abode of, the chairman or clerk of the board, and by leaving a true and attested copy with the clerk of the municipality. Service on the chairman or clerk of the board and on the clerk of the municipality shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the chairman or clerk of the board or the clerk of the municipality a necessary party to the appeal. (2) For any appeal taken on or after October 1, 2004, process shall be served in accordance with subdivision (5) of subsection (b) of section 52-57. Such service shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the clerk of the municipality or the chairman or clerk of the board a necessary party to the appeal. (g) Service of process shall also be made on each person who petitioned the board in the proceeding, provided such person's legal rights, duties or privileges were determined therein. However, failure to make service within fifteen days on parties other than the board shall not deprive the court of jurisdiction over the appeal. If service is not made within fifteen days on a party in the proceeding before the board, the court, on motion of the party or the appellant, shall make such orders of notice of the appeal as are reasonably calculated to notify the party not yet served. If the failure to make service causes prejudice to the board or any party, the court, after hearing, may dismiss the appeal or may make such other orders as are necessary to protect the party prejudiced. (h) The appeal shall state the reasons on which it has been predicated and shall not stay proceedings on the decision appealed from. However, the court to which the appeal is returnable may grant a restraining order, on application, and after notice to the board and cause shown. (i) Within thirty days after the return date to court, or within any further time the court allows, the board shall transmit the record to the court. The record shall include, without limitation, (1) the original papers acted on by the board and appealed from, or certified copies thereof, (2) a copy of the transcript of the stenographic or sound recording prepared in accordance with section 8-7a, and (3) the written decision of the board including the reasons therefor and a statement of any conditions imposed. If the board does not provide a transcript of the stenographic or the sound recording of a meeting where the board deliberates or makes a decision on a petition, application or request on which a public hearing was held, a certified, true and accurate transcript of a stenographic or sound recording of the meeting prepared by or on behalf of the applicant or any other party shall be admissible as part of the record. By stipulation of all parties to the appeal, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for additional costs. The court may require or permit subsequent corrections or additions to the record. (j) Any defendant may, at any time after the return date of the appeal, make a motion to dismiss the appeal. If the basis of the motion is a claim that the appellant lacks standing to appeal, the appellant shall have the burden of proving standing. The court may, on the record, grant or deny the motion. The court's order on the motion may be appealed in the manner provided in subsection (o) of this section. (k) The court shall review the proceedings of the board and shall allow any party to introduce evidence in addition to the contents of the record if (1) the record does not contain a complete transcript of the entire proceedings before the board, including all evidence presented to it, pursuant to section 8-7a, or (2) it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court may take the evidence or may appoint a referee or committee to take such evidence as it directs and report the same to the court, with any findings of facts and conclusions of law. Any report of a referee, committee or mediator under subsection (f) of section 8-8a shall constitute a part of the proceedings on which the determination of the court shall be made. (l) The court, after a hearing thereon, may reverse or affirm, wholly or partly, or may revise, modify or remand the decision from which the appeal was taken in a manner consistent with the evidence in the record before it. In an appeal from an action of a planning commission taken under section 8-29, the court may also reassess any damages or benefits awarded by the commission. Costs shall be allowed against the board if the decision appealed from is reversed, affirmed in part, modified or revised. (m) Appeals from decisions of the board shall be privileged cases and shall be heard as soon as is practicable unless cause is shown to the contrary. (n) No appeal taken under subsection (b) of this section shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the Superior Court and such court has approved such proposed withdrawal or settlement. (o) There shall be no right to further review except to the Appellate Court by certification for review, on the vote of three judges of the Appellate Court so to certify and under such other rules as the judges of the Appellate Court establish. The procedure on appeal to the Appellate Court shall, except as otherwise provided herein, be in accordance with the procedures provided by rule or law for the appeal of judgments rendered by the Superior Court unless modified by rule of the judges of the Appellate Court. (p) The right of a person to appeal a decision of a board to the Superior Court and the procedure prescribed in this section shall be liberally interpreted in any case where a strict adherence to these provisions would work surprise or injustice. The appeal shall be considered to be a civil action and, except as otherwise required by this section or the rules of the Superior Court, pleadings may be filed, amended or corrected, and parties may be summoned, substituted or otherwise joined, as provided by the general statutes. (q) If any appeal has failed to be heard on its merits because of insufficient service or return of the legal process due to unavoidable accident or the default or neglect of the officer to whom it was committed, or the appeal has been otherwise avoided for any matter of form, the appellant shall be allowed an additional fifteen days from determination of that defect to properly take the appeal. The provisions of section 52-592 shall not apply to appeals taken under this section. (r) In any case in which a board fails to comply with a requirement of a general or special law, ordinance or regulation governing the content, giving, mailing, publishing, filing or recording of any notice either of a hearing or of an action taken by the board, any appeal or action by an aggrieved person to set aside the decision or action taken by the board on the grounds of such noncompliance shall be taken not more than one year after the date of that decision or action.