

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION TO OPT-OUT OF PUBLIC ACT 17-155
CONCERNING TEMPORARY HEALTH CARE STRUCTURES

October 3, 2017

WHEREAS, the State of Connecticut Legislature has adopted a new Public Act 17-155 concerning 'temporary health care structures' that was approved on July 6, 2017 and went into effect on October 1, 2017.

WHEREAS, Public Act 17-155 approves 'temporary health care structures' as allowable accessory units in single-family residential zones, unless a municipality opts-out of the statute.

WHEREAS, a 'temporary health care structure' is defined by the Act as a transportable residential structure, not larger than 500 gross square feet, primarily assembled off-site, that is owned by a caregiver or mentally or physically impaired person and used as his or her residence.

WHEREAS, the subject Act pre-empts Darien's zoning regulations and requires the issuance of permits for 'temporary health care structures' as accessory uses that conform to standards set forth in the Act, even where local zoning regulations now otherwise prohibit such installation and use.

WHEREAS, a participating municipality must approve or deny a permit within 15 business days after application, but cannot deny a permit if the applicant provides proof of compliance with the statute and applicable building and public health codes.

WHEREAS, the Planning and Zoning Commission of the Town of Darien believes the legislation, as written, is well intentioned; however, it may have numerous possible unintended consequences for the Town, including but not limited to:

- Permits "temporary" structures which may exist in place for many years unregulated;
- 15-day expedited permit timeframe could be unrealistic as structures are required to comply with all applicable health, building, and fire codes. Reviews will be required that will almost certainly extend beyond this 15-day period;
- Requires land use offices to determine appropriate residency through a doctor's note;
- Requires land use offices to determine that the resident "caregiver" owner is "unpaid";
- Could potentially result in FOI, HIPAA, and variance controversies and legal actions;
- Other potential issues with enforcement and problems with removal of the structure after the occupant moves out or is deceased;
- Has the potential to conflict with many long-time zoning regulations and established/desired land use patterns.

WHEREAS, the Planning and Zoning Commission finds that the 2016 Town Plan of Conservation and Development is silent on temporary health care structures or other similar facilities.

WHEREAS, the Planning and Zoning Commission wishes to further evaluate and study the potential consequences of Public Act 17-155 prior to committing to such legislation.

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WHEREAS, a public hearing on the matter was properly noticed and held on October 3, 2017 to solicit public comment on the proposal pursuant to the subject Act.

WHEREAS, public comments were heard from one Town resident concerning the proposal to opt-out of Public Act 17-155.

WHEREAS, said public comments expressed a desire for the Town of Darien to permit some form of temporary health care structures or accessory attached apartments for elder care or otherwise; however, not necessarily through Public Act 17-155.

NOW, THEREFORE, BE IT RESOLVED for the reasons noted herein, the Planning and Zoning Commission of the Town of Darien on this 3rd day of October, 2017, votes to opt-out of the legislation. The Commission recommends that the Town via RTM vote, complete the process of opting out of Public Act 17-55 concerning temporary health care structures, a copy of which is attached to this resolution as Exhibit 'A'.

BE IT FURTHER RESOLVED that the motion for the adoption of the forgoing resolution was made by Commissioner Riva and was seconded by Commissioner Rand and passed by a vote of 4-0. The following Commissioners voted in favor of the resolution: Sini, Cunningham, Rand, Riva. The following Commissioners were absent: Voigt, Olvany.



Substitute Senate Bill No. 922

Public Act No. 17-155

AN ACT CONCERNING TEMPORARY HEALTH CARE STRUCTURES.

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

Section 1. (NEW) (*Effective October 1, 2017*) (a) For the purposes of this section:

(1) "Caregiver" means a relative, legal guardian or health care agent who is responsible for the unpaid care of a mentally or physically impaired person.

(2) "Mentally or physically impaired person" means a person who requires assistance, as certified in writing by a physician licensed in this state, with two or more activities of daily living, including, but not limited to, bathing, dressing, grooming, eating, meal preparation, shopping, housekeeping, transfers, bowel and bladder care, laundry, communication, self-administration of medication and ambulation.

(3) "Temporary health care structure" means a transportable residential structure that provides an environment in which a caregiver may provide care for a mentally or physically impaired person and that (A) is primarily assembled at a location other than the site of installation, (B) has one occupant who is the mentally or physically impaired person, (C) is not larger than five hundred gross square feet, (D) is not placed on or attached to a permanent foundation, and (E) complies with the applicable provisions of the State Building Code, Fire Safety Code and Public Health Code.

(b) A temporary health care structure shall be allowed as an accessory use in any single-family residential zoning district on a lot zoned for single-family detached dwellings that is owned by a caregiver or mentally or physically impaired person and used as his or her residence. Such structures shall comply with all setback requirements, coverage limits and maximum floor area ratio limitations that apply to accessory structures in such zoning district as of October 1, 2017.

(c) No person shall install a temporary health care structure without first obtaining a permit from the municipality in which the structure will be installed, for which the municipality may charge a fee not to exceed two hundred fifty dollars and an annual permit renewal fee not to exceed one hundred dollars. The municipality shall not be required to hold a public hearing on the permit application and shall either approve or deny the permit not later than

fifteen business days after the permit application is submitted to the municipality by the applicant. The municipality shall not deny the permit if the applicant provides proof of compliance with this section. The applicant shall send notice of the permit application, by certified or registered mail, to each person appearing of record as an owner of property which abuts the property upon which the temporary health care structure is proposed to be installed. The notice shall be sent not later than three business days after the permit application is submitted to the municipality by the applicant.

(d) The municipality may require a temporary health care structure installed pursuant to this section to be accessible to emergency vehicles and be connected to private water or septic systems or to water, sewer and electric utilities that serve the primary residence.

(e) Not more than one temporary health care structure shall be installed on a lot zoned for a single-family detached dwelling.

(f) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the structure or elsewhere on the lot.

(g) Following issuance of such permit, the municipality may require that the applicant provide written evidence of compliance with this section as long as the temporary health care structure remains on the property. Evidence of compliance may be obtained through an inspection by the municipality of the temporary health care structure at reasonable times convenient to the caregiver.

(h) Any temporary health care structure installed pursuant to this section shall be removed not later than one hundred twenty days after the mentally or physically impaired person no longer occupies the structure or no longer qualifies as a mentally or physically impaired person. Upon issuance of the permit authorizing such structure, the municipality may require the applicant to post a bond in an amount not exceeding fifty thousand dollars to ensure compliance with this subsection.

(i) The municipality may revoke a permit issued pursuant to subsection (c) of this section if the permit holder violates any provision of this section.

(j) A municipality, by vote of its legislative body or, in a municipality where the legislative body is a town meeting, by vote of the board of selectmen, may opt out of the provisions of this section and the provision of subsection (a) of section 8-2 of the general statutes, as amended by this act, regarding authorization for the installation of temporary health care structures, provided the zoning commission or combined planning and zoning commission of the municipality: (1) First holds a public hearing in accordance with the provisions of section 8-7d of the general statutes on such proposed opt-out, (2) affirmatively decides to opt out of the provisions of said sections within the period of time permitted under section 8-7d of the general statutes, (3) states upon its records the reasons for such decision, and (4) publishes notice of such decision in a newspaper having a substantial circulation in the municipality not later than fifteen days after such decision has been rendered.

Sec. 2. Subsection (a) of section 8-2 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses, as defined in section 22a-93, and the height, size and location of advertising signs and billboards. Such bulk regulations may allow for cluster development, as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture, as defined in

subsection (q) of section 1-1. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family child care home or group child care home in a residential zone. No such regulations shall prohibit the use of receptacles for the storage of items designated for recycling in accordance with section 22a-241b or require that such receptacles comply with provisions for bulk or lot area, or similar provisions, except provisions for side yards, rear yards and front yards. No such regulations shall unreasonably restrict access to or the size of such receptacles for businesses, given the nature of the business and the volume of items designated for recycling in accordance with section 22a-241b, that such business produces in its normal course of business, provided nothing in this section shall be construed to prohibit such regulations from requiring the screening or buffering of such receptacles for aesthetic reasons. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Unless such town opts out, in accordance with the provisions of subsection (j) of section 1 of this act, such regulations shall not prohibit the installation of temporary health care structures for use by mentally or physically impaired persons in accordance with the provisions of section 1 of this act if such structures comply with the provisions of said

section. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

Approved July 6, 2017