

Bill No. 1643

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Referred to Committee on STATE AND URBAN DEVELOPMENT

LCO No. 4377

Introduced by SEN. DeNARDIS, 34th Dist.

General Assembly,

January Session, A.D., 1971

AN ACT ESTABLISHING A PLANNING BOARD OF APPEALS.

CONNECTICUT
STATE LIBRARY
LEGISLATIVE REFERENCE
SECTION

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

Section 1. In each municipality having a planning
commission or a combined planning and zoning commission there
shall be a planning board of appeals consisting of five members
unless otherwise provided by special act. The members of such
planning board of appeals shall be electors and shall not be
members of the planning commission or planning and zoning
commission, any provision of any special act to the contrary
notwithstanding. In towns such board shall, unless otherwise
provided by special act, be elected or appointed in such manner
and for such terms as is determined by ordinance adopted by the
town. In cities and boroughs, unless otherwise provided by
special act, such board shall be appointed by the chief executive
officer, one of the original members to serve for one year, one
for two years, one for three years, one for four years and one
for five years, and thereafter each new member shall be appointed
for a term of five years, and may be removed for cause by the
same authority. Before removal, charges shall be presented to
such member in writing, and he shall be given reasonable
opportunity to be heard in his own defense. Any vacancy in such
board, unless otherwise provided by ordinance or special act,
shall be filled for the unexpired portion of the term, by the
board of selectmen of towns or the chief executive officer of
cities and boroughs. Such board by vote of its membership shall

elect a chairman from among its members, unless otherwise 33
provided by special act, and all meetings of such board shall be 34
held at the call of the chairman and at such other times as the 35
board determines and shall be open to the public. Such chairman
or in his absence the acting chairman may administer oaths and 36
compel the attendance of witnesses. The board shall keep minutes 37
of its proceedings showing the vote of each member upon each
question or, if absent or failing to vote, indicating such fact, 38
and shall also keep records of its examinations and other 39
official actions. Each rule or regulation and each amendment or 40
repeal thereof and each order, requirement or decision of the
board shall immediately be filed in the office of the board and 41
shall be a public record.

Sec. 2. (a) The planning board of appeals shall have the 42
following powers and duties: (1) To hear and decide appeals where 43
it is alleged that there is an error in any order, requirement or 44
decision made by the official charged with the enforcement of
chapter 126 OF THE GENERAL STATUTES AS AMENDED, subdivision or 45
resubdivision of land, plan of development, or regulation adopted 46
thereunder; (2) to hear and decide all matters including special 47
exceptions upon which it is required to pass by the specific 48
terms of the planning commission regulations, and (3) to 49
determine and vary the application of the planning commission
regulations in harmony with their general purpose and intent and 50
with due consideration for conserving the public health, safety,
convenience, welfare and property values solely with respect to 51
a parcel of land where, owing to conditions especially affecting
such parcel but not affecting generally the district in which it 52
is situated, a literal enforcement of such regulations would
result in exceptional difficulty or unusual hardship so that 53
substantial justice will be done and the public safety and 54
welfare secured. (b) The planning board of appeals shall receive
and hear appeals from combined planning and zoning commissions on 55
all matters enumerated in subsection (a) of this section, any 56
section of the general statutes to the contrary notwithstanding.

Sec. 3. Section 8-18 of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: As used in this chapter: "Commission" means a planning commission; "BOARD" MEANS A PLANNING BOARD OF APPEALS; "municipality" includes a city, town or borough or a district establishing a planning commission under section 7-326 OF THE GENERAL STATUTES; "subdivision" means the division of a tract or parcel of land into three or more parts or lots for the purpose, whether immediate or future, of sale or building development expressly excluding development for municipal, conservation or agricultural purposes, and including a resubdivision "resubdivision" means a change in a map of an approved or recorded subdivision or resubdivision if such change (a) affects any street layout shown on such map, (b) affects any area reserved thereon for public use of (c) diminishes the size of any lot shown thereon have been conveyed after the approval or recording of such map; "town" and "selectmen" include district and officers of such district, respectively.

Sec. 4. Section 8-21 of the general statutes is repealed and the following is substituted in lieu thereof: No member of any planning commission OR PLANNING BOARD OF APPEALS and no member of any municipal agency exercising the powers of any planning commission, whether existing under the general statutes or under any special act, shall appear for or represent any person, firm or corporation or other entity in any matter pending before the planning or zoning commission or zoning OR PLANNING board of appeals or agency exercising the powers of any such commission or board in the same municipality, whether or not he is a member of the commission hearing such matter. No member of any planning commission OR PLANNING BOARD OF APPEALS shall participate in the hearing or decision of the commission OR BOARD of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of the commission OR BOARD and the remaining members

of the commission, unless otherwise provided by special act, 85
shall choose an elector to act as a member of such commission OR 86
BOARD in the hearing and determination of the particular matter 87
or matters in which the disqualification arose. 88

Sec. 5. Section 8-22 of the general statutes is repealed 90
and the following is substituted in lieu thereof: The commission 91
AND BOARD may engage such employees as are necessary for its work 92
and may contract with professional consultants. The commission
AND BOARD may accept gifts but all of its expenditures, exclusive 93
of such gifts, shall be within the amounts appropriated for its 94
purposes. Action of the commission AND OF THE BOARD shall be 95
taken only upon the vote of a majority of its members.

Sec. 6. Section 8-28 of the general statutes is repealed 96
and the following is substituted in lieu thereof: (a) Notice of 97
all official actions of a planning commission shall be published 98
in a newspaper having a substantial circulation in the
municipality within ten days after such action has been taken. 99
Except as provided in section 8-30 OF THE GENERAL STATUTES AND 100
SECTION 2 OF THIS ACT, any person aggrieved by an official action 101
of a planning commission may appeal therefrom within fifteen days
from the date when notice of such decision was published in a 102
newspaper pursuant to the provisions of section 8-26 OF SAID 103
SUPPLEMENT to the [court of common pleas for the county within
which] PLANNING BOARD OF APPEALS FOR the municipality [with] IN 104
WHICH such planning commission lies. In those situations where 105
the approval of the planning commission must be inferred because 106
of the failure of the commission to act on an application, any
person aggrieved by such approval may appeal therefrom within 107
twenty days after the expiration of the sixty-day period 108
prescribed in section 8-26 OF SAID SUPPLEMENT for action by the
commission to the [court of common pleas for the county within 109
which] PLANNING BOARD OF APPEALS FOR the municipality [with] IN 110
WHICH such planning commission lies. The commission shall return 111
either the original papers acted upon by it and constituting the

record of the case appealed from or certified copies thereof. 112

(b) THE CONCURRING VOTE OF FOUR MEMBERS OF THE PLANNING BOARD OF 113
 APPEALS SHALL BE NECESSARY TO REVERSE ANY ORDER, REQUIREMENT OR 114
 DECISION OF THE OFFICIAL CHARGED WITH THE ENFORCEMENT OF THE
 PLANNING REGULATIONS, SUBDIVISIONS PLANS OR PLANS OF DEVELOPMENT 115
 OR TO DECIDE IN FAVOR OF THE APPLICANT ANY MATTER UPON WHICH IT 116
 IS REQUIRED TO PASS UNDER ANY REGULATION OR TO VARY THE
 APPLICATION OF SUCH PLANNING REGULATION. AN APPEAL MAY BE TAKEN 117
 TO THE PLANNING BOARD OF APPEALS BY ANY PERSON AGGRIEVED OR BY 118
 ANY OFFICER, DEPARTMENT, BOARD OR BUREAU OF ANY MUNICIPALITY 119
 AGGRIEVED AND SHALL BE TAKEN WITHIN SUCH TIME AS IS PRESCRIBED BY
 A REGULATION ADOPTED BY SAID BOARD BY FILING WITH THE PLANNING 120
 COMMISSION OR THE OFFICER FROM WHOM THE APPEAL HAS BEEN TAKEN AND 121
 WITH SAID BOARD A NOTICE OF APPEAL SPECIFYING THE GROUNDS
 THEREOF. THE OFFICER FROM WHOM THE APPEAL HAS BEEN TAKEN SHALL 122
 FORTHWITH TRANSMIT TO SUCH BOARD ALL THE PAPERS CONSTITUTING THE 123
 RECORD UPON WHICH THE ACTION APPEALED FROM WAS TAKEN. AN APPEAL,
 SHALL STAY ALL PROCEEDINGS IN THE ACTION APPEALED FROM UNLESS THE 124
 PLANNING COMMISSION OR THE OFFICER FROM WHOM THE APPEAL HAS BEEN 125
 TAKEN CERTIFIES TO THE PLANNING BOARD OF APPEALS AFTER THE NOTICE 126
 OF APPEAL HAS BEEN FILED THAT BY REASON OF FACTS STATED IN THE
 CERTIFICATE A STAY WOULD CAUSE IMMINENT PERIL TO LIFE OR 127
 PROPERTY, IN WHICH CASE PROCEEDINGS SHALL NOT BE STAYED, EXCEPT 128
 BY A RESTRAINING ORDER WHICH MAY BE GRANTED BY A COURT OF RECORD
 ON APPLICATION, ON NOTICE TO THE PLANNING COMMISSION OR THE 129
 OFFICER FROM WHOM THE APPEAL HAS BEEN TAKEN AND ON DUE CAUSE 130
 SHOWN. SAID BOARD SHALL FIX A REASONABLE TIME FOR THE HEARING OF 131
 ANY APPEAL AND GIVE DUE NOTICE THEREOF TO THE PARTIES. SAID
 BOARD SHALL DECIDE SUCH APPEAL WITHIN SIXTY DAYS AFTER THE 132
 HEARING. AT SUCH HEARING ANY PARTY MAY APPEAR IN PERSON AND MAY 133
 BE REPRESENTED BY AGENT OR BY ATTORNEY. SAID BOARD MAY REVERSE
 OR AFFIRM WHOLLY OR PARTLY OR MAY MODIFY ANY ORDER, REQUIREMENT 134
 OR DECISION APPEALED FROM AND SHALL MAKE SUCH ORDER, REQUIREMENT 135
 OR DECISION AS IN ITS OPINION SHOULD BE MADE IN THE PREMISES AND 136
 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 PLANNING BOARD OF APPEALS GRANTS OR DENIES ANY SPECIAL EXCEPTION OR VARIANCE IN THE PLANNING REGULATIONS OR SUBDIVISION OR RESUBDIVISION PLANS 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. 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 TEN DAYS AFTER SUCH DECISION HAS BEEN RENDERED. SUCH EXCEPTION, VARIANCE OR REVERSAL SHALL BECOME EFFECTIVE AT SUCH TIME AS IS FIXED BY THE BOARD, PROVIDED A COPY THEREOF SHALL BE FILED IN THE OFFICE OF THE TOWN, CITY OR BOROUGH CLERK.

Sec. 7. Section 8-30 of the general statutes is repealed and the following is substituted in lieu thereof: Any person affected may appeal from the action of [such commission] THE PLANNING BOARD OF APPEALS, taken under section [8-29] 2 OF THIS ACT within thirty days after [notice to him of the adoption of a survey, map or plan or the assessment of benefits or damages] THE FINAL DISPOSITION OF SUCH CASE and any interested party may join in such appeal. Separate appeals [relating to the same survey, map or plan or assessment] arising out of the same subject matter may be heard as one cause. Such appeal shall be taken to the court of common pleas for the county in which such municipality is located and shall be served and returned as process in other civil actions. [Said] SUCH court may, by committee or otherwise, reassess such damages or benefits, and review, revoke, modify or affirm any act of such commission AND BOARD OF APPEALS and, if such damages are increased or such benefits reduced or such act revoked, award costs against the municipality, otherwise against the appellant or appellants, and may issue execution accordingly.

Sec. 8. Section 8-30a of the general statutes is repealed 166
and the following is substituted in lieu thereof: The provisions 167
of sections 8-28 and 8-30 AND SECTION 2 OF THIS ACT shall apply 168
to appeals from planning commissions AND BOARDS OF APPEAL or 169
other final planning authorities of any municipality whether or 170
not such municipality has adopted the provisions of this chapter 171
and whether or not the charter of such municipality or the 172
special act establishing planning in such municipality contains 173
a provision giving a right of appeal from planning commissions 174
AND BOARDS OF APPEAL, and any provision of any special act, 175
inconsistent with the provisions of said sections, is repealed. 176

STATEMENT OF PURPOSE: To establish a planning board of appeals 176
similar to zoning boards of appeal so appeals can be taken from 177
planning commissions to a second administrative board which would 178
have expertise in the area of planning and development. 179

[Proposed deletions are enclosed in brackets and proposed 180
additions are all capitalized, or underlined where appropriate.] 182