

Robinson+Cole

PRESENTATION FOR TOWN OF GREENWICH
PLANNING & ZONING COMMISSION

SPECIAL PERMITS AND SPECIAL EXCEPTIONS

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SPECIAL PERMITS AND SPECIAL EXCEPTIONS-OVERVIEW

- Introduction

- Traditional “Euclidean” zoning – arranging areas into districts and permitting certain uses in districts as designated on a zoning map.
 - Residential, industrial, commercial zones
 - Uniform regulations within each district.

SPECIAL PERMITS AND SPECIAL EXCEPTIONS

- Alternative zoning schemes – allows certain compatible uses subject to agency review.
 - Special permits or special exceptions – agency approves a particular use for a particular piece of land.
 - Site plan review – agency reviews compliance with zoning regulations of “as of right” uses.

AGENCY ACTION

- **Special Permits (or Special Exceptions)**
 - “Special permits” and “special exceptions” are synonymous terms and are used interchangeably.
 - Mobil Oil Corp. v. Zoning Commission, 30 Conn. App. 816, 819 (1993); See also A.P. & W. Holding Corp. v. Planning and Zoning Board of Milford, 167 Conn. 182, 185 (1974); and Summ v. Zoning Commission of Ridgefield, 150 Conn. 79, 87 (1962).

SPECIAL PERMITS

- Also referred to as special uses or special cases.
- Common special permit uses – churches, schools, hospitals in residential districts.
- Review definitions in regulations.
- See Michos v. PZC of the Town of Easton, 151 Conn. App. 539 (2014) (Commission misapplied unambiguous regulation by allowing a prayer center with more than the allowed parking in front yard).

SPECIAL PERMITS

- Special permit process permits a generally compatible use in a zoning district but because of the nature of the proposed use, special attention must be given to its location and method of operation in order to keep such special uses compatible with uses as of right in that district.
- If Commissions apply regulations inconsistently in the special permit context they may violate uniformity requirements of C.G.S. Section 8-2.

SPECIAL PERMITS

- In other words, special permits allow a use of property in a manner expressly permitted under the zoning regulations. The proposed use must comply with the zoning regulations and conditions may be imposed if necessary to protect the public health, safety, convenience and property values
- Towns in Connecticut may allow more than one of their land use agencies to consider special permits or special exceptions. This is allowed by statute. See Section 8-3c(b) for zoning or combined planning and zoning commissions and Section 8-6(a)(2) that allow zoning boards of appeal to consider and act on special exceptions.

SPECIAL PERMITS

- Proposed use cannot be required to comply with standards not authorized by the regulations. See DeMaria v. Enfield Planning and Zoning Commission, 159 Conn. 534 (1970); WATR, Inc. v. Zoning Board of Appeals of Town of Bethany, 158 Conn. 196 (1996).
- Conditions, however, can be imposed for the public interest when an application is approved. See Summ v. Zoning Commission of Ridgefield, *supra*, 150 Conn. 91.

SPECIAL PERMITS

- A dogged example is Kilburn v. Plan & Zoning Commission of The Town of West Hartford, 113 Conn. App. 621 (2009).
- West Hartford ordered an owner to reduce the number of dogs she had at her house from 22 to 2 over two years.
- Kilburn's attempt to modify her special permit for kennels was rejected. The rejection was upheld by the Appellate Court.



SPECIAL PERMITS

- A special permit or special exception does not require any showing of hardship because it allows uses that are expressly permitted under conditions pursuant to regulations. See Grasso v. Zoning Board of Appeals of the Groton Long Point Association, Inc., 69 Conn. App. 230, 242 (2002).
- By statute, charter or special act the zoning authority of any municipality can delegate authority of certain special permits or special exceptions to other agencies such as a zoning board of appeals.

SPECIAL PERMITS

- Circumstances under which a special exception is permitted must be contained in the zoning regulations. See, e.g., Michos v. PZC of the Town of Easton, 151 Conn. App. 539 (2014); Powers v. Common Council of City of Danbury, 154 Conn. 156, 161 (1966); and Cameo Park Homes, Inc. v. Planning and Zoning Commission, 150 Conn. 672, 678 (1963).
 - The zoning regulations as to special permits must be strictly construed.

SPECIAL PERMITS

- Public hearings are required for all special permit and special exception applications.
- The zoning regulations frequently require that a special permit application be accompanied by a site plan. Special permit approval is often dependent on site plan approval so the agency can evaluate a revised site plan in light of special permit regulations.

SPECIAL PERMITS

- When an agency grants or denies an application, it must state its reasons for that decision. General Statutes § 8-3c(b), § 8-7, and § 8-26e.
- If a special exception satisfies the regulations and statutes, an agency does not have the discretion to deny the application. See, e.g., Daughters of St. Paul Inc. v. Zoning Board of Appeals, 17 Conn. App. 53, 57 (1988); and CRRA v. Planning and Zoning Commission, 46 Conn. App. 566, 570 (1997).

SPECIAL PERMITS

- State statute (C.G.S. Section 8-23(a)(1)) requires that a Plan of Conservation and Development (“POCD”) be prepared and adopted by the body that acts as the municipal planning agency every 10 years.
- The POCD is a planning tool but does not expressly control the land use process in Connecticut. “It has no power to make, amend or repeal existing zoning regulations or zone boundaries.” Sheridan v. Planning Board, 159 Conn. 1, 9 (1969).

SPECIAL PERMITS

- The reviewing agency may deny a special permit upon the applicant's failure to satisfy specific standards of the existing regulations but cannot deny the use for vague, general reasons not found in the regulations. See, e.g., DeMaria v. Enfield Planning and Zoning Commission, 159 Conn. 534, 541 (1970). Also, a finding that an existing regulation is not consistent with the POCD is not valid. See CRRA v. Planning and Zoning Commission of the Town of Wallingford, 225 Conn. 731, 752 (1993).

SPECIAL PERMITS

- Where extraordinarily difficult sites are subject to applications for special permits the site's topography, traffic uses and neighboring uses can come into play. In Hayes Family Limited Partnership v. Town Plan and Zoning Commission of the Town of Glastonbury, 115 Conn. App. 655, cert. denied, 293 Conn. 919 (2009) the applicant sought to build a 13,013 square foot CVS with a drive-through on a small hill in Glastonbury. To do so would have required removal of 80,000 cubic yards of material and to build a steep sloped 225 feet long, 14 foot high retaining wall, surrounded on 3 sides by six foot wide sidewalks, two dumpsters, loading docks and seventy parking spaces near residential properties.







- The Commission denied the application and both the trial court and Appellate Court upheld the denial noting that Glastonbury's zoning regulations allowed it to consider size and topography of the property, existing and proposed contours, compatibility with the neighborhood and other factors.

- Conditions: Even if a special permit application satisfies the standards set forth in the regulations, the proposed use is still subject to agency imposed conditions that are necessary to protect the public health, safety, convenience and property values.
- Incidentally, Glastonbury's ZBA does issue special exceptions for building within the envelope of pre-existing nonconforming structures but not for new developments like the proposed CVS.

APPEALS OF AGENCY ACTION

- **Special Permits**

- When reviewing special permit and special exception applications, an agency acts in an administrative capacity.
- On appeal, a court can only reverse an agency decision on a special permit or special exception if the agency action was illegal, arbitrary, or an abuse of its discretion.
- Review of an agency decision is based only on whether reasons assigned for the decision are reasonably supported by the record and whether such reasons are relevant to the considerations applicable under the zoning regulations.

APPEALS OF AGENCY ACTION

- Even if one of the reasons given by the agency is sufficient to support its decision, the reviewing court must uphold the agency's decision. Id.
- If the agency fails to give reasons for its action, the court must search the record to find a reason sufficient to support the decision. R. Fuller, Land Use and Practice, Volume 9A, §33.4, p. 160 (1999).

APPEALS OF AGENCY ACTION

- Commission members must give specific statements and their personal knowledge must be based on facts known to them rather than on speculation in order for their statements to be considered by reviewing courts. See, e.g., Loring v. Planning & Zoning Commission, 287 Conn. 746, 760 (2008).

CONCLUSION

- Review of special permit and special exception applications provide important mechanisms to land use agencies that enables them to address certain categories of uses in a special manner.
- The utilization of special permits and special exceptions provides viable options for commissions to control particular uses more than other general uses. Careful attention to ongoing changes to the enabling legislation.
- A continuous review of emerging case law is also mandatory as this remains a dynamic area of contention that is hotly litigated.

THANK YOU.

QUESTIONS?