

## CHAPTER 126a

# AFFORDABLE HOUSING LAND USE APPEALS

### Table of Contents

Sec. 8-30g. Affordable housing land use appeals procedure. Definitions. Affordability plan; regulations. Conceptual site plan. Maximum monthly housing cost. Percentage-of-income requirement. Appeals. Modification of application. Commission powers and remedies. Exempt municipalities. Moratorium. Model deed restrictions.  
Sec. 8-30h. Annual certification of continuing compliance with affordability requirements. Noncompliance.

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**Sec. 8-30g. Affordable housing land use appeals procedure. Definitions. Affordability plan; regulations. Conceptual site plan. Maximum monthly housing cost. Percentage-of-income requirement. Appeals. Modification of application. Commission powers and remedies. Exempt municipalities. Moratorium. Model deed restrictions.** (a) As used in this section:

(1) "Affordable housing development" means a proposed housing development which is (A) assisted housing, or (B) a set-aside development;

(2) "Affordable housing application" means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing;

(3) "Assisted housing" means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code;

(4) "Commission" means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority;

(5) "Municipality" means any town, city or borough, whether consolidated or unconsolidated;

(6) "Set-aside development" means a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed

development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income;

(7) "Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development; and

(8) "Commissioner" means the Commissioner of Economic and Community Development.

(b) (1) Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following: (A) Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter; (B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units; (C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units; (D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and (E) draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

(2) The commissioner shall, within available appropriations, adopt regulations pursuant to chapter 54 regarding the affordability plan. Such regulations may include additional criteria for preparing an affordability plan and shall include: (A) A formula for determining rent levels and sale prices, including establishing maximum allowable down payments to be used in the calculation of maximum allowable sales prices; (B) a clarification of the costs that are to be included when calculating maximum allowed rents and sale prices; (C) a clarification as to how family size and bedroom counts are to be equated in establishing maximum rental and sale prices for the affordable units; and (D) a listing of the considerations to be included in the computation of income under this section.

(c) Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their

arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply.

(d) For any affordable dwelling unit that is rented as part of a set-aside development, if the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred per cent of the Section 8 fair market rent as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to sixty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred per cent of said Section 8 fair market rent. If the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred twenty per cent of the Section 8 fair market rent, as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to eighty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred twenty per cent of such Section 8 fair market rent.

(e) For any affordable dwelling unit that is rented in order to comply with the requirements of a set-aside development, no person shall impose on a prospective tenant who is receiving governmental rental assistance a maximum percentage-of-income-for-housing requirement that is more restrictive than the requirement, if any, imposed by such governmental assistance program.

(f) Any person whose affordable housing application is denied or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall be made returnable to the superior court for the judicial district where the real property which is the subject of the application is located. Affordable housing appeals, including pretrial motions, shall be heard by a judge assigned by the Chief Court Administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges, sitting in geographically diverse parts of the state, so that a consistent body of expertise can be developed. Unless otherwise ordered by the Chief Court Administrator, such appeals, including pretrial motions, shall be heard by such assigned judges in the judicial district in which such judge is sitting. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable.

(g) Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. The commission shall

also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses, and (B) the development is not assisted housing, as defined in subsection (a) of this section. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

(h) Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The day of receipt of such a modification shall be determined in the same manner as the day of receipt is determined for an original application. The filing of such a proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. The commission shall hold a public hearing on the proposed modification if it held a public hearing on the original application and may hold a public hearing on the proposed modification if it did not hold a public hearing on the original application. The commission shall render a decision on the proposed modification not later than sixty-five days after the receipt of such proposed modification, provided, if, in connection with a modification submitted under this subsection, the applicant applies for a permit for an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by the commission on such modification under this subsection would lapse prior to the thirty-fifth day after a decision by an inland wetlands and watercourses agency, the time period for decision by the commission on the modification under this subsection shall be extended to thirty-five days after the decision of such agency. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said sixty-five days or subsequent extension period permitted by this subsection shall constitute a rejection of the proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

(i) Nothing in this section shall be deemed to preclude any right of appeal under the

provisions of section 8-8, 8-9, 8-28, 8-30 or 8-30a.

(j) A commission or its designated authority shall have, with respect to compliance of an affordable housing development with the provisions of this chapter, the same powers and remedies provided to commissions by section 8-12.

(k) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a municipality in which at least ten per cent of all dwelling units in the municipality are (1) assisted housing, or (2) currently financed by Connecticut Housing Finance Authority mortgages, or (3) subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, or (4) mobile manufactured homes located in mobile manufactured home parks or legally-approved accessory apartments, which homes or apartments are subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which, for a period of not less than ten years, persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income. The municipalities meeting the criteria set forth in this subsection shall be listed in the report submitted under section 32-1m. As used in this subsection, "accessory apartment" means a separate living unit that (A) is attached to the main living unit of a house, which house has the external appearance of a single-family residence, (B) has a full kitchen, (C) has a square footage that is not more than thirty per cent of the total square footage of the house, (D) has an internal doorway connecting to the main living unit of the house, (E) is not billed separately from such main living unit for utilities, and (F) complies with the building code and health and safety regulations.

(l) (1) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be applicable to an affordable housing application filed with a commission during a moratorium, which shall be the four-year period after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal, or (B) after notice of a provisional approval is published pursuant to subdivision (4) of this subsection. Any moratorium that is in effect on October 1, 2002, is extended by one year.

(2) Notwithstanding the provisions of this subsection, such moratorium shall not apply to (A) affordable housing applications for assisted housing in which ninety-five per cent of the dwelling units are restricted to persons and families whose income is less than or equal to sixty per cent of median income, (B) other affordable housing applications for assisted housing containing forty or fewer dwelling units, or (C) affordable housing applications which were filed with a commission pursuant to this section prior to the date upon which the moratorium takes effect.

(3) Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.

(4) (A) The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or seventy-five housing unit-equivalent points.

(B) A municipality may apply for a certificate of affordable housing project completion pursuant to this subsection by applying in writing to the commissioner, and including documentation showing that the municipality has accumulated the required number of points within the applicable time period. Such documentation shall include the location of each dwelling unit being counted, the number of points each dwelling unit has been assigned, and the reason, pursuant to this subsection, for assigning such points to such dwelling unit. Upon receipt of such application, the commissioner shall promptly cause a notice of the filing of the application to be published in the Connecticut Law Journal, stating that public comment on such application shall be accepted by the commissioner for a period of thirty days after the publication of such notice. Not later than ninety days after the receipt of such application, the commissioner shall either approve or reject such application. Such approval or rejection shall be accompanied by a written statement of the reasons for approval or rejection, pursuant to the provisions of this subsection. If the application is approved, the commissioner shall promptly cause a certificate of affordable housing project completion to be published in the Connecticut Law Journal. If the commissioner fails to either approve or reject the application within such ninety-day period, such application shall be deemed provisionally approved, and the municipality may cause notice of such provisional approval to be published in a conspicuous manner in a daily newspaper having general circulation in the municipality, in which case, such moratorium shall take effect upon such publication. The municipality shall send a copy of such notice to the commissioner. Such provisional approval shall remain in effect unless the commissioner subsequently acts upon and rejects the application, in which case the moratorium shall terminate upon notice to the municipality by the commissioner.

(5) For purposes of this subsection, "elderly units" are dwelling units whose occupancy is restricted by age and "family units" are dwelling units whose occupancy is not restricted by age.

(6) For purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (A) No points shall be awarded for a unit unless its occupancy is restricted to persons and families whose income is equal to or less than eighty per cent of median income, except that unrestricted units in a set-aside development shall be awarded one-fourth point each. (B) Family units restricted to persons and families whose income is equal to or less than eighty per cent of median

income shall be awarded one point if an ownership unit and one and one-half points if a rental unit. (C) Family units restricted to persons and families whose income is equal to or less than sixty per cent of median income shall be awarded one and one-half points if an ownership unit and two points if a rental unit. (D) Family units restricted to persons and families whose income is equal to or less than forty per cent of median income shall be awarded two points if an ownership unit and two and one-half points if a rental unit. (E) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one-half point. (F) A set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two per cent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995.

(7) Points shall be awarded only for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty per cent of median income.

(8) Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.

(9) A newly-constructed unit shall be counted toward a moratorium when it receives a certificate of occupancy. A newly-restricted unit shall be counted toward a moratorium when its deed restriction takes effect.

(10) The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after a three-year moratorium expires, except (A) as otherwise provided in subsection (k) of this section, or (B) when sufficient unit-equivalent points have been created within the municipality during one moratorium to qualify for a subsequent moratorium.

(11) The commissioner shall, within available appropriations, adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection. Such regulations shall specify the procedure to be followed by a municipality to obtain a moratorium, and shall include the manner in which a municipality is to document the units to be counted toward a moratorium. A municipality may apply for a moratorium in accordance with the provisions of this subsection prior to, as well as after, such regulations are adopted.

(m) The commissioner shall, pursuant to regulations adopted in accordance with the

provisions of chapter 54, promulgate model deed restrictions which satisfy the requirements of this section. A municipality may waive any fee which would otherwise be required for the filing of any long-term affordability deed restriction on the land records.

(P.A. 88-230, S. 1, 12; 89-311, S. 1, 4; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-250, S. 1; 95-280, S. 1, 3; P.A. 96-211, S. 1, 5, 6; June Sp. Sess. P.A. 98-1, S. 84; P.A. 99-261, S. 1-3; P.A. 00-206, S. 1; P.A. 02-87, S. 1, 3, 4; P.A. 05-191, S. 2.)

History: P.A. 89-311 effective July 1, 1990 (Revisor's note: P.A. 88-230 authorized substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain" in all 1989 public and special acts, effective September 1, 1991); P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-250 and P.A. 96-211 replaced Commissioner and Department of Housing with Commissioner and Department of Economic and Community Development; P.A. 95-280 amended Subsec. (a) to revise the definition of "affordable housing development" to require twenty-five per cent of units rather than twenty per cent be affordable for thirty rather than twenty years and to add provision that income of eligible persons or families may be eighty per cent of the state median income; amended Subsec. (b) to change appeal to the judicial district where the real property is located instead of the Hartford-New Britain district and amended Subsec. (c) to add provision placing burden of proof on the commission to show that the application would locate affordable housing in an industrial area not zoned for housing and that development is not assisted housing and made technical changes, effective July 6, 1995, and applicable to affordable housing applications pending on that date for which the commission has not rendered a decision; June Sp. Sess. P.A. 98-1 amended Subsec. (a) by making a technical change; P.A. 99-261 amended Subsec. (a) by adding that for at least thirty years after the initial occupation of the proposed development the dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing, and by adding the requirement that 10% of the deed-restricted units be set aside for families at or below 60% of the area median income, effective June 29, 1999, and amended Subsec. (b) by adding further specification as to where all appeals, including pretrial motions, shall be heard (Revisor's note: In codifying Subsec. (a) the Revisors editorially deleted the designator "(i)" from the phrase "... of the proposed development, (i) such dwellings ..." to reflect the deletion of "(ii)" by floor amendment to sHB 6834); P.A. 00-206 amended Subsec. (a) to redefine "affordable housing development" and to add definitions in Subdivs. (6) to (8), inserted new Subsecs. (b) to (e), inclusive, re affordability plan, conceptual site plan, maximum monthly housing cost and maximum percentage-of-income-for-housing requirement, respectively, relettered former Subsecs. (b) to (e) as Subsecs. (f) to (i), amended Subsec. (g) re commission's burden of proof, amended Subsec. (h) to add language re commission procedures to deal with modifications to applications and increase from forty-five to sixty-five days the time period within which the commission must act, added new Subsec. (j) re powers and remedies of commission under this chapter, relettering former Subsec. (f) as (k) and adding requirement that commissioner use the most recent U.S. census, deleted former

Subsec. (g) re certificate of affordable housing project completion and added Subsec. (l) re moratorium; P.A. 02-87 amended Subsec. (k) by adding "binding recorded" in Subdiv. (3), adding Subdiv. (4) re mobile manufactured homes and accessory apartments, defining "accessory apartment" and making technical changes, amended Subsec. (l)(1) to extend moratorium period from three years to four years and add provision re extension of moratorium in effect and added Subsec. (m) re model deed restrictions; P.A. 05-191 amended Subsec. (k) by requiring municipalities meeting criteria to be listed in report submitted under Sec. 32-1m instead of in regulations, and eliminating authority for regulations and requirement re denominator to be used in determining percentage required by subsection.

Court held that legislature intended statute's appeals procedure to apply to defendant's legislative decision to grant or deny a zone change in connection with an affordable housing proposal. 228 C. 498. Cited. 232 C. 122. Denial by planning commission of master plan for affordable housing development does not invalidate appeal of decision by zoning commission denying proposed changes to zoning regulations and map because viability of such changes not dependent on viability of such master plan. 271 C. 1. Denial of sewer application by water pollution control authority is valid reason for denial of subdivision application for affordable housing development by the planning commission and commission has no authority to approve subdivision application on condition sewer application is approved. Id., 41.

"The narrow rigorous standard of Sec. 8-30g dictates that the commission cannot deny an application on broad grounds such as noncompliance with zoning." 37 CA 303. Cited. Id., 788. Court construed language of section to apply to every type of application filed with a commission in connection with an affordable housing project whether application is submitted to change zoning at a particular site or to build affordable housing on land previously zoned for that purpose. 42 CA 94. Burden of proof on commission to show by specific evidence that denial was necessary to protect substantial public interests in health and safety or that public interests clearly outweighed need for affordable housing. 59 CA 608. Statute requires applicant in an affordable housing appeal to prove that he or she is aggrieved pursuant to Sec. 8-8(b). 66 CA 631.

Subsec. (b):

Statute provides no right of direct appeal to Appellate Court from a final judgment of Superior Court and, as in other zoning cases, such an appeal requires certification by Appellate Court as required in Sec. 8-8(o). 245 C. 257.

Subsec. (c):

When a town renders a decision, it shall identify those specific public interests that it seeks to protect by the decision. 249 C. 566. Subparas. (B), (C) and (D) of Subdiv. (1) require the same defendant's burden as Subpara. (A), namely, to establish that decision and reasons cited therein are supported by sufficient evidence in the record. Id. Court's function in an appeal is to apply the scope of judicial review as expressed in Subparas.

(A), (B), (C) and (D) to the pertinent determinations made by zoning commission. Id. Subpara. (A) states the general scope of review, drawn from traditional zoning principles, that applies to Subparas. (B), (C) and (D). Id. Each of the Subparas. in Subdiv. (1) embodies the "sufficient evidence" standard. Id. Judicial review must be based on the zoning record returned to the court, not on the basis of a trial de novo. Id. Need for affordable housing is determined by the need for such housing in the local community, not by regional or statewide housing needs. Id. Legislature intended that commission bear burden of proving that the public interest cannot be protected by reasonable changes to applicant's proposed development and such burden is not inconsistent with Sec. 22a-19. 256 C. 674. Statute requires board to make a collective statement of its reasons on the record when it denies an affordable housing land use application, including a denial based on the industrial zone exemption. 259 C. 675.

Subsec. (g):

Application of legal standards set forth in subsec. is mixed question of law and fact subject to plenary review by court and the court is not limited to review of commission decision to determine if supported by sufficient evidence. 271 C. 1.

**Sec. 8-30h. Annual certification of continuing compliance with affordability requirements. Noncompliance.** On and after January 1, 1996, the developer, owner or manager of an affordable housing development, developed pursuant to subparagraph (B) of subdivision (1) of subsection (a) of section 8-30g, that includes rental units shall provide annual certification to the commission that the development continues to be in compliance with the covenants and deed restrictions required under said section. If the development does not comply with such covenants and deed restrictions, the developer, owner or manager shall rent the next available units to persons and families whose incomes satisfy the requirements of the covenants and deed restrictions until the development is in compliance. The commission may inspect the income statements of the tenants of the restricted units upon which the developer, owner or manager bases the certification. Such tenant statements shall be confidential and shall not be deemed public records for the purposes of the Freedom of Information Act, as defined in section 1-200.

(P.A. 95-280, S. 2, 3; P.A. 97-47, S. 16.)

History: P.A. 95-280 effective July 6, 1995; P.A. 97-47 substituted reference to the Freedom of Information Act for list of sections.