



Note: Any group that requires zoning relief for their project is often best served by hiring an attorney familiar with both the regulators and the regulations. This document serves to provide general information only.

For an example of how to deal with zoning go to the [guide at the Town of Berlin, CT website](#).

What is the role of the Zoning Board? How does it differ from the Planning Board?

The Zoning Board is responsible for regulating the use of land and buildings through the interpretation and enforcement of the zoning regulation adopted by the town or city. Every municipality has its own regulations which often are available online.

These regulations typically govern the:

- Height, number of stories and size of buildings
- Percentage of the area of the lot that may be occupied
- Density of units in given neighborhoods
- Allowable proximity to other buildings and streets
- Location and permitted use of buildings, structures and land for trade, industry, residences and other purposes
- Proximity to other structures as well as to streets and sidewalks.
- Appearance of advertising signs and billboards

and are designed to:

- Encourage the most appropriate use of land and preserve the character, aesthetics and value of a neighborhood.
- Provide for traffic and pedestrian access and prevent traffic hazards, including requiring adequate off-street parking and installation of sidewalks.
- Promote public safety, ensuring that all buildings, structures, uses, equipment, or material shall be accessible for fire and for police protection.
- Provide adequate light and air
- Facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements
- Protect historically, architecturally and culturally significant buildings and sites
- Encourage energy efficient patterns of development; and
- Protect the environment including the protection of water supplies and against erosion caused by wind, rain and poor drainage.

Among the towns and cities in CT, there are different names for the board that makes these decisions. Call the local City or Town Clerk for further information.

When do developers of property typically go before the zoning board?

When a developer or property owner needs to make a change that requires an exception of the established regulations, he or she will need to request a variance or special permit (For the purposes of this discussion, we will group all needed approvals under the category “zoning relief”) This will occur in situations involving:

- Increase of density: This is perhaps the most common zoning relief request for affordable housing developers who are developing multi-household units in areas zoned for single-family dwellings.
- Change of use – For example, if a property to be developed for housing is in a commercial area rather than a residential one.
- Minimum setbacks – For example, if a property expansion will bring the structure beyond the minimum distance to the next property.
- Reduction in required off-street parking spaces – this is common in the development of affordable housing when there is not enough space for off-street parking and few residents own their own vehicles.
- Building height

In some cases, typically in larger developments involving new construction, a developer will need to submit a site plan for approval to a municipal board even when no variance or special permit is required. In this situation, the developer will also need to demonstrate that the project has taken safety, light, public health, aesthetics, character, etc, into consideration.

What are the threshold conditions an owner must meet in order to qualify for zoning relief?

- That the absence of this zoning relief will present an exceptional difficulty or unusual hardship—rather than a mere inconvenience—and without it, the owner would not be able to make reasonable use of his or her property. For example, in the case of a setback variance, he or she must show why the property could not be expanded in another direction.
- That the hardship is not of his or her own doing.
- That the hardship is peculiar to the property in question, in contrast with those of other properties in the same district (for example, the particular lot is very narrow or has an unusual condition (as opposed, for example, to being in a hilly neighborhood where every property has similar conditions).
- That the hardship is not of a financial nature. In general, most hardships will have financial implications, but zoning relief is usually not granted based on financial considerations alone.

What are the typical arguments used to petition for zoning relief? Depending on the nature of the request, an owner may want to argue that:

- The project will not have a negative effect on public health or safety – and in fact will improve the community and serve a demonstrated need. (See [How to Address Common Community Concerns](#))
- The project will not reduce property values or change the character of the neighborhood – and in fact will enhance it. (See [How to Address Common Community Concerns](#))
- The property has significant public support – and this is where testimony, letters, etc. are important. (See [Getting Local Government on Your Side](#))

- That the property owner or developer is (or will be) a member of the community and has its interests at heart and intends to remain actively involved with property (i.e. a project sponsor will want to emphasize that they will ensure that the property will be well maintained and that tenant needs will be responsibly addressed)
- That traffic to and from the property will not increase congestion (using studies, if necessary) or that drainage will not be affected, etc. The developer needs to be thorough to cover all health and safety bases.
- CT Statute 8-30G requires such zoning relief. See [Fair Housing Laws](#) for more info on this law that applies only to a community with less than 10% affordable housing, requiring it to demonstrate that its reasons for denying the relief clearly outweigh the need for affordable housing.

What are some successful negotiation tactics?

The most common tactic for a developer seeking a multi-family building in an area zoned for fewer households is to agree to a reduction of density. Some affordable housing developers have agreed to reduce density, and in return, the town has agreed to provide an alternative town-owned site for the remaining units.

What are some common tactics used by affordable housing opponents to deny or advocate for the denial of zoning relief/approval?

Most opponents of affordable/supportive housing are sophisticated enough to know that rather than risk being sued for discrimination, the most effective way to oppose the project is to frame it in terms of public health and safety: For example, that the additional turn-off will be hazardous to pedestrians, that the sewer system is inadequate to handle the increased load, or that the density will prevent access by emergency vehicles. Less powerful but equally common arguments are that the public schools will be overburdened and the character of the neighborhood will be adversely changed.

Perhaps the most common strategy employed by those who oppose a project—especially those board members who are worried about controversy but are also reluctant to outwardly deny a project—is to insist on extensive zoning and land use reviews or additional studies that result in months of delay. Many affordable housing projects stop being viable when time becomes a factor: The group loses momentum, the financing falls through or the carrying costs become excessive. Knowing this, some groups opt to assert their legal rights if they suspect illegal discrimination is at play. Unlike the zoning process, which often has no deadline by which a decision must be made, the courts are in a position to grant immediate relief where it is necessary. But the costs of litigation can be high, not just in terms of hiring attorneys, but also because of the potential impact on future relations with elected officials and neighbors. For this reason, many owners stick it out – or start looking for another site. Court processes can also take a very long time to be resolved, especially if one of the parties can afford the substantial attorney’s fees involved.