



Town of Montville, Connecticut

Department of Land Use & Development

Planning & Zoning
Inland Wetlands & Watercourses
Economic & Community Development



Explanation of The Commission's Responsibilities During the Review of Site Plan Applications Imposing Modifications v. Conditions

Prepared by: Dennis Goderre, PLA, AICP; Director of Land Use and Development

Date: June 17, 2026

1. Context

a. Summary of Request

This memorandum summarizes the Commission's responsibility when deciding upon Permitted Use (aka 'as of right') in a zoning district.

A Permitted Use is designated as such because it has been identified by the Commission at time of zoning regulation adoption as being a use compatible with other land uses within the same zoning district. In other words, the Commission acknowledged that the use 'gets along' with other uses in said district so long as the application for the use meets criteria that is prescriptively outlined in the zoning regulations. Some 'as of right' uses may have specific standards; some requirements, such as parking layout, building height and lighting, may be applicable to all Site Plan applications and specific to a zoning district.

In contrast, a Special Permit Use is a use that may 'get along' with other uses in a district but warrant more scrutiny in the review process and discretion under the Commission's 'legislative' review¹. Special Permit Uses are listed separately, distinguishing them from Permitted Uses.

The Commission's review of Site Plan applications is authorized under CGS 8-3(g) as a ministerial² review (please take note of definition which limits the Commission's authority). Under ministerial review there are only three actions the Commission may take:

Approve: When the commission approves a site plan, the Commission is stating it meets all criteria as outlined in the zoning regulations.

Modify: The commission may 'approve with modification' so long as the modification(s) is connected to specific criteria in the zoning regulations.³ Arbitrary restrictions shall not be

¹ When acting in a legislative capacity, the Commission has wide discretion to make policy decisions based on the community's long-term health, safety, welfare, and Plan of Conservation and Development (POCD).

² **ministerial, adj.** (16c) Of, relating to, or involving an act that involves obedience to instructions or laws instead of discretion, judgment, or skill; of, relating to, or involving a duty that is so plain in point of law and so clear in matter of fact that no element of discretion is left to the precise mode of its performance... (Source: Black's Law Dictionary)

³ Modifications are NOT a Condition. For the purposes of site plan reviews, conditions may be imposed for purposes of bonding public improvements and erosion controls.

imposed nor requirements added that are not listed in the regulations. See Note 1 for treatment of applications which involve public improvements or erosion controls.

Deny: The Commission does not approve the application because it does not meet one or more elements of the regulations.

For instance, the regulations state refuse containers shall not be located in the ‘front yard’. An application is filed and the applicant locates a refuse container along the front property line, clearly within the front yard. The Commission may ‘approve the application with the following modification: the refuse container be located outside of the front yard.’ The applicant, when submitting plans for a zoning permit prior to construction, will adjust the plan with the refuse container located outside of the front yard. The ZEO will then approve the plan based upon the commission’s ‘modification’.

Should the regulations not explicitly state that refuse containers cannot be placed within the front yard, the Commission cannot require said refuse container be relocated and the Commission must approve the application, assuming all other aspects of the application meets the zoning regulations.

If the above example was part of a Special Permit use, the Commission would have the discretion to require relocation of a refuse container anywhere on site as a ‘condition’.

Coastal Site Plans (CAM)

Coastal site plans may be approved, modified, conditioned or denied. Under CAM, conditions are allowed but only when in conjunction with the Commission’s CAM purview, protecting coastal resources and water dependent uses. See Sec. 22a-106 excerpt below.

Special Permits

During Special Permit review the Commission acts in its legislative capacity and thus, has very broad discretion to condition or deny an application, and said conditions or denial may be based upon criteria not explicitly outlined in the regulations. Presumably, the Special Permit review criteria is broad enough to support such discretionary decisions and sufficient evidence has been provided during the public hearing process.

Note 1: The following excerpt is from *What’s Legally Required* by Michael A. Zizka, 8th Ed., 2023:

Ch. 16 – Making the Decision

4. Statutory Controls Involving Development Applications

a. Zoning Site Plans

The statutes governing zoning site plan applications specifically provide that the relevant commission may approve, modify and approve, or deny the applications. However, a site plan may be modified or denied "only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations." [CGS § 8-3(g)] A zoning commission should not make an *independent* regulatory judgment about whether the inland wetlands and watercourses regulations have been satisfied; it should rely solely on decisions made by, or feedback from, the IWWA itself.

The only site-plan conditions authorized by the statutes are those requiring "a financial guarantee in the form of a bond, a bond with surety or similar instrument to ensure (A) the timely and adequate completion of any site improvements that will be conveyed to or controlled by the municipality, and (B) the implementation of any erosion and sediment controls required during construction activities." [CGS § 8-3(g)(1)] *The author therefore recommends that zoning commissions avoid placing other types of "conditions" on site plan approvals. Rather, the decisions should specify how the site plans must be modified to achieve compliance with the regulations.*

The commission may accept surety bonds, and it must accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit, so long as the guarantee and the bank or other issuing entity are acceptable to the commission. State law gives the permittee the discretion to post the security at any time before all approved site improvements are completed, except that the commission may require a financial guarantee to be posted for erosion and sediment controls prior to the commencement of any related site improvements. [CGS § 8-3(g)(1)]

Note 2:

Sec. 22a-106. Criteria and process for action on coastal site plans. (a) In addition to determining that the activity proposed in a coastal site plan satisfies other lawful criteria and conditions, a municipal board or commission reviewing a coastal site plan shall determine whether or not the potential adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities are acceptable.

(b) In determining the acceptability of potential adverse impacts of the proposed activity described in the coastal site plan on both coastal resources and future water-dependent development opportunities a municipal board or commission shall: (1) Consider the characteristics of the site, including the location and condition of any of the coastal resources defined in section [22a-93](#); (2) consider the potential effects, both beneficial and adverse, of the proposed activity on coastal resources and future water-dependent development opportunities; and (3) follow all applicable goals and policies stated in section [22a-92](#) and identify conflicts between the proposed activity and any goal or policy.

(c) Any persons submitting a coastal site plan as defined in subsection (b) of section [22a-105](#) shall demonstrate that the adverse impacts of the proposed activity are acceptable and shall demonstrate that such activity is consistent with the goals and policies in section [22a-92](#).

(d) A municipal board or commission approving, modifying, conditioning or denying a coastal site plan on the basis of the criteria listed in subsection (b) of this section shall state in writing the findings and reasons for its action.

(e) In approving any activity proposed in a coastal site plan, the municipal board or commission shall make a written finding that the proposed activity with any conditions or modifications imposed by the board: (1) Is consistent with all applicable goals and policies in section [22a-92](#); (2) incorporates as conditions or modifications all reasonable measures which would mitigate the adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities.