

February 1, 2023

Esteemed Chairs Kavros Degraw and Rahman,
Members of the Planning and Development Committee:

The Western Connecticut Council of Governments (WestCOG) appreciates the opportunity to comment on Raised Bill 915, *An Act Concerning the Granting of Variances by Zoning Boards of Appeals*.

WestCOG cannot support the bill in its current form:

- The bill would force special permits to be decided on by Zoning Boards of Appeals (ZBAs), a power – which unless otherwise locally stipulated – is reserved for Zoning Commissions (ZCs) under CGS §8-3(c)b. Such an arrangement muddies the waters between the regulatory functions exercised by a ZC, whose purpose under state law is to make decisions on land use, and the quasi-judicial functions exercised by a ZBA, whose purposes are to review those decisions for errors and, on the rare occasion it is needed, to grant a variance. Assigning the authority for decisions on special permits to the ZBA would not only bypass the regulatory function of the ZC over a large array of land use proposals; it would also land any dispute over the ZBA’s decisions in court, as a body cannot independently adjudicate appeals of its own decisions. This may increase local costs (through additional litigation) and decrease ability of less-resourced participants to appeal decisions (court presents higher barriers to entry than a local board does).
- The standard the bill would establish for “area” variances are low and arguably inequitable. For “area” variances, the bill would merely require that “the benefit of the variance to the person requesting such variance exceeds any adverse effect of granting such variance on the health, safety or welfare of the neighborhood or community.” A standard this lax gives a ZBA few legs to stand on in refusing a variance, and few grounds for a court not to overturn the denial of a variance; furthermore, it is not clear why the benefits to a person who is seeking not to follow local regulation should trump the costs that he or she is creating for the neighbors who do follow those regulations. Such a standard elevates the private gain of an individual over the social costs to a community and may be expected to create inequitable situations.
- The bill would codify “use” variances, a concept for which it is challenging to identify an actual need, and in doing so may legitimize and promote their application. It is not clear why “use” variances are needed, when procedures to adjust the uses allowed on a parcel – amendment to the zoning text or map – exist and are successfully applied. In contrast with these procedures, a “use” variance would bypass existing legal requirements for referral to a Planning Commission and to a regional Council of Governments. The only determination a ZBA would need to make to grant a “use” variance would be that it “will not impair the essential character of the neighborhood or the objectives of the plan of development of the municipality” and that the “unusual hardship is not the result of any act or omission of

the person requesting such variance.” This lax, undefined, and potentially illegal standard (PA 21-29 banned consideration of “character” in zoning) would effectively allow ZBAs to change the zoning of any parcel without any comprehensive planning or any of the other requirements that apply to the actions of local Planning and Zoning Commissions.

- Application of “use” variances may produce unintended consequences. State law provides that zoning may not treat small group homes and childcare facilities any differently from single-family homes; it also allows for an affordable housing development on any parcel except those which are zoned for industrial use but do not permit residential use. A use variance to allow a single-family home in a zone that does not allow such homes, or for commercial or residential use in an industrial zone, may not only allow group homes or, respectively, affordable housing developments on the parcels in question; it could also be used to argue that such uses must be allowed in all such zones, since such uses may be permitted through a use variance. (State law in these cases does not differentiate whether a use is permitted by zoning regulation or by variance.)

Adoption of this bill may result in a situation where variances – which should be the exception rather than the rule – proliferate, and where the promises of equal treatment and uniformity in land use are replaced by what is essentially spot zoning by another name.

Given these concerns, WestCOG urges you not to advance this bill as it is drafted.

Thank you for your consideration.

A handwritten signature in black ink that reads "Francis R. Pickering". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Francis R. Pickering
Executive Director