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Granny Pods: An Affordable Solution or Zoning Quandary?

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Connecticut wants to make it easier for taxpayers to care for aging or impaired dependents at home by allowing small, freestanding structures (a.k.a. "granny pods" or "MEDCottages") on their properties; however, the new law grants municipalities the right to "opt-out" of this land use advancement, and many are doing just that.

Public Act 17-155

On July 6, 2017, the Connecticut legislature adopted Public Act 17-155: "An Act Concerning Temporary Healthcare Structures" (THS), which, as of October 1, 2017, authorizes a detached, accessory unit in a single-family zone as an as-of-right use. Unless a municipality formally opts-out of the law's requirements, qualifying structures cannot be denied by the municipality or prohibited by a zoning ordinance that otherwise regulates accessory structures and uses. Connecticut joins Minnesota, North Carolina, Tennessee and Virginia in passing state legislation to permit THSs.

A THS is defined by the Connecticut Office of Legislative Research as "small, self-contained, prefabricated dwellings that are temporarily placed on residential property, allowing individuals living in the principal dwelling to care for the THS occupant." THSs are used to help seniors and people with mental or physical disabilities delay or avoid entering long-term care facilities and cost significantly less.

According to the Connecticut Chapter of American Planning Association, "the statute was enacted to enable the introduction of a new type of housing unit which will be an important option for Connecticut's aging households seeking affordable, handicapped-accessible housing close to caretakers and/or family." The CCAPA cites that Connecticut's fastest growing population over the next several decades will be 65 years old and greater and further opines that "most seniors want to stay in their homes…but face sudden and unexpected health problems" that require special care and attention.

The achievement of the new statute is that it provides an expedient process for permitting THSs on a property, thereby providing timely and cost-effective alternatives to nursing home care or in-home modifications, especially when that need is imminent. The statute embraces all dependents and extends this housing option to any mentally or physically impaired person, regardless of his/her need or age, creating a new opportunity for many families to keep their loved ones comfortable, close to home, and out of special-care institutions, for short or long-term periods.

Permitting a "Granny Pod" Pursuant to P.A. 17-155

The Qualifying Components:

A THS is allowed as an accessory use in any single-family residential zone on a property that is owned by a qualifying caregiver or by a qualifying occupant and is used as his or her residence. The structure itself must be of a non-permanent nature, meaning it is primarily assembled off-site, is 500 square feet or less, and has no permanent foundation. The location must comply with all setback requirements, coverage limitations, and maximum floor area ratio limitations that apply to accessory structures in the underlying zone as of October 1, 2017. It must further comply with the applicable State Building, Fire Safety, and Public Health Codes. Only one (1) THS is permitted per property and must be removed 120 days after the qualified occupant no longer occupies the structure or qualifies as impaired.

A qualifying occupant is defined as a mentally or physically impaired person requiring assistance with two or more daily living activities (i.e., eating/meal preparation, shopping, housekeeping, bill pay, bathing, dressing, grooming, bowel/bladder care, laundry, communication, self-administration of medication, ambulation, etc). The impairment must be documented in writing by a licensed Connecticut physician for review by the municipality.

A qualifying caregiver is an unpaid relative, legal guardian or health care agent responsible for the care of a mentally or physically impaired person. The statute does not require that the impaired person and caregiver are related by blood.

The Application and Approval Process:

Anyone seeking to install a THS must apply to the municipality for a permit. The applicant must give notice of the application by certified or registered mail to abutting property owners within three days of filing the application. No public hearing is required and the municipality must make a decision on the application within 15 days of submission. Most notably, if the structure complies with the requirements set forth in the statute, a municipality may not deny the application.

A municipality does retain some discretion in the review process under the statute. It may require that the structure be accessible to emergency vehicles, and be connected to private water or septic systems or water, sewer, and electric utilities that serve the primary residence. A municipality may further charge fees of up to $250 for initial permits; $100 for annual-permit renewals; and may require permittees to post a bond of up to $50,000. After approval, a municipality may revoke the permit for violations and make physical inspections of the structure at times convenient to the caregiver to ensure continued compliance.

The "Opt-Out" Provision

The statute includes verbiage allowing a municipality to opt-out of the requirement and replace the state law with a local regulation by a vote of the legislative body and the zoning (or P&Z)

commission. The zoning commission must hold a public hearing on the proposed opt-out, state its reasons to support it on the record, and publish its decision within 15 days of the vote, prior to the vote of the legislative body.

After the adoption of the statute in July, several Connecticut municipalities began studying the impact of the statute and initiating the opt-out. This process may slow or stall installation of "granny-pods" throughout the state, but are initiating important conversations about the statute, the future of alternative housing and zoning solutions for this unique and growing need.

At the time of writing, the Towns of Roxbury and Ledyard have legally opted-out of the statute, while dozens more have and continue to schedule meetings and public hearings to review the statute with the intention to opt-out. Based on review of meeting minutes, municipalities agree that the statute is well-intentioned but have concerns which support the opt-out. Several municipalities presently authorize accessory residential units which would encompass THSs and find the statute is less restrictive, and therefore, less safe, then existing regulations. Some find that statutory timing for review of the application by different municipal departments (wetlands, DPW, or the traditional 30-day period for building department review) is at odds with the mandated fast-track 15-day approval requirement. Enforcement concerns also top the list of concerns with regard to the need for ongoing inspections and removal process. In addition, some find that that the statute's caregiver status and requirement to prove an occupant's medical need to the town may be beyond the traditional jurisdiction of a zoning enforcement officer.

Until formal opt-outs are finalized, municipalities are bound to oblige to the new law, creating a window of opportunity for many in the interim. If you are unsure about how the statute applies your area, please consider checking with your local town hall or call our firm for consultation. *The Law Offices of Eliovson & Tenore, is a firm specializing in elder law. We can be reached at 203-336-2566 or by email at ct@connecticutelderlaw.com.*

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