

**MINUTES OF WORKSHOP
HELD BY THE PLANNING AND ZONING COMMISSION
OCTOBER 16, 2017**

ROLL CALL:

Members Present:	Eric Prause, Chair Andy Kidd, Vice Chair Michael Stebe, Secretary Timothy Bergin
Alternates:	Julian Stoppelman Teresa Ike Patrick Kennedy
Also Present:	Gary Anderson, Director of Planning Renata Bertotti, Senior Planner Greg Smith, Chief Building Official Lawrence Talbot, Fire Marshal Kim Dubanoski, Chief Sanitarian Timothy O’Neil, Assistant Town Attorney Nancy Martel, Recording Secretary
Time Convened:	6:07 P.M.

Discussion of P.A. 17-155 – An Act Concerning Temporary Health Care Structures

Ms. Bertotti reminded the Commission of a prior discussion about a public act which is now in effect. The law allows temporary health care structures, she reported, which are to be treated by municipalities as an accessory structure, no different from a garage or shed. The structures are to be allowed on a residentially-zoned property within the setbacks in that zone, must be under 500 sq. ft, cannot have a foundation, and are to be occupied by an eligible person defined within the statutes, she reported. Ms. Bertotti explained that the structure is intended to be temporary during health care treatment of the occupant. She reported that the municipality has an option to either agree to the law or opt out. The opt-out procedure, she noted, involves a two-step process in which the Commission must hold a public hearing, after which the Commission could opt out. Ms. Bertotti said that in that case, the Board of Directors would need to opt out as well. There is a requirement for both bodies to agree, she stated.

Ms. Bertotti noted that in the prior discussion, the Commission suggested Town Staff members review this law. One of the requirements is that the process is to be approved within 15 days of application, she reported, and Planning would not be overly involved. She explained the Zoning Enforcement Officer would be required to sign off as long as it meets the setbacks. It would then default to the requirements of the Building, Health and Fire Departments for approvals, Ms.

Bertotti stated, but the timing is problematic. There is a permit fee set at \$250 with a renewal fee of \$100, and there could be bonding required in order to ensure the removal of the structure, she explained.

Mr. Anderson stated that he briefed the Board of Directors on this matter and they have been provided with the memo, though he has not received any feedback. The Commission is driving this, and if it comes to a public hearing or contemplating opting out, Staff will report back to the Board of Directors. Mr. Anderson suggested the attendees introduce themselves.

Attorney Tim O'Neil, Staff Attorney, Mr. Greg Smith, Building Official, Mr. Lawrence Talbot, Fire Marshal, and Kim Dubanoski, Chief Sanitarian, introduced themselves.

Ms. Bertotti reported that the discussion should be about whether or not the Commission is interested in considering opting out of this law and holding a hearing to that effect.

Mr. Kidd sought confirmation that if the Commission does nothing, the Town is in, and the question is whether to attempt to opt out if so desired. Ms. Bertotti responded that currently, the Town is in; if an individual came in with a proposal, the Town would have to allow it.

Mr. Stoppelman referred to Ms. Bertotti's memo, which stated that the temporary housing would have the same restrictions as any other accessory building. He requested an explanation. Ms. Bertotti replied that referred to setback and height requirements. Mr. Stoppelman questioned whether there are any other zoning rules that apply. Ms. Bertotti responded that building coverage would apply.

Mr. Stoppelman inquired whether temporary health care structures would be prevented from being located in a front yard. Ms. Bertotti reported that is a setback.

Mr. Kennedy asked if the Commission opts out, would the town adopt different regulations. In his opinion, the structure is basically a residential shed and the permit would be similar except it would meet different requirements.

Mr. Stoppelman questioned the Staff's opinions.

Attorney O'Neil acknowledged that the law is relatively new, and there has been conversation on the municipal attorneys' website. It is his understanding that the Commission can either opt out or not. If the Commission does not opt out, the public act governs the temporary health care structures, he explained; you cannot opt out and create regulations. Attorney O'Neil reported the public act is intended to pre-empt whatever local municipalities may try to accomplish through Planning and Zoning. The Commission would not want to opt out and attempt to create its own set of regulations as to these structures, he said.

Mr. Anderson added that the Commission has discussed detached accessory structures, which are different as they are not temporary health care structures, but it would address allowing a small housing unit in a different way. He reiterated Attorney O'Neil's point that it would be outside of this process; the Commission may want to consider this in addition.

Attorney O'Neil suggested that if this has not been a consideration, there would not be a reason to do it now. The Commission does not want to appear as though they are superimposing their

own regulations on this statute, though it is not precisely on point with the type of structure that might be addressed in permanent accessory structures, he explained. The point of the temporary housing structures, he explained, is the anticipation that there will be a growing population that will be in need of these types of structures in the next 20-30 years. Attorney O'Neil stated, in his opinion, the discussion is to either opt out or allow it to apply, and the Commission would not need to go in another direction unless previously planned. He agreed with Ms. Bertotti that the law is in effect currently and it would be considered under the structure of the public act; as of October 1, when the public act went into effect, whatever setback and other requirements were in place, those will be in place and cannot be changed after the fact.

Mr. Prause surmised there is nothing to prevent revisiting this in a year and then deciding to opt out; there is no time window. Attorney O'Neil responded that the Commission can opt out whenever it chooses to. In addition, he reported, if the Commission opts out, it can opt back in. He reported that is the opinion of the consensus.

Mr. Bergin noted that the public act speaks to a permitting process. He questioned who would be the authority in the town to grant the permits. Mr. Anderson replied the Building Department would be, primarily. Mr. Smith stated it may involve a number of departments. Depending on the scope of work, the permit application drives the review prior to approval, he explained. There would likely be water and sewer connections, Mr. Smith noted, thus Water and Sewer would be involved. Typically for a single-family house the Fire Marshal would not be involved. There would be zoning review, which has limitations if the Commission opts in. The Health Department would be involved if there is well or septic on the property, he said.

Mr. Bergin asked Mr. Smith if the Building Department would streamline the application process if the Commission moves forward. Mr. Smith responded that is not the Building Department's choice. As far as coordinating the effort to avoid a conflict with a requirement that may be under another department's jurisdiction, he reported, that would not change. He related the only thing that would change under the Building code would be the time period for review. Typically, when an individual submits a permit application, there are 30 days in which to review it, he reported; however, under this act, there are 15 days to review and either issue the permit or reject it. Mr. Smith stated that he does not see that as being a major hardship; the structures are manufactured and there are third party inspections and certifications along with the structures as they are assembled, which replace the Building Department' inspection process.

Mr. Stebe noted the placement of the structure is straight forward; i.e., where it can be placed and a Certificate of Occupancy requiring its utilities. He stated he is more concerned with the certification of the doctor's order, who is residing in the structure, and whether a life use occupant would count as an owner/occupant or would the individual be required to be the registered owner of the house. According to the memo, he commented, either the caregiver or the individual must be the owner of the property; i.e., does life use as an individual count as the owner of the property even if there is a third party coming in to take care of the individual? Mr. Stebe also questioned the party responsible for the medical review to ensure the ADL criteria are met.

Ms. Bertotti stated that the way the law is written is her main concern. There are terms that are either very difficult to enforce or completely unenforceable, she said, and that would be the

motivation to opt out. Ms. Bertotti reported she does not have recommendations, as the Act cannot be rewritten, and it would be difficult to enforce.

Mr. Stebe also noted that it is a temporary structure, and asked when there would be a review if a homeowner constructs a structure for a parent and then the individual is moved to a care facility. He said the Act is written as a time-limited, non-permanent structure. He stated that he is in favor of the idea, though he would like a process in place for an ongoing review. Mr. Stebe explained that at DSS, there is a long list of criteria to ensure the requirements, and RNs and clinical staff are utilized.

Mr. Anderson agreed that those are the challenges and are not built into the regulations. The items up front are easier to track because they are laid out, he explained, but if someone leaves the house or passes away, that could be a difficult situation.

Mr. Prause interjected that people frequently leave and return; they have a fall and go into rehab for a couple of months. He inquired where the line would be drawn for occupancy requirements. He further asked if the renewal would be a yearly renewal, which Ms. Bertotti affirmed. Mr. Prause also questioned HIPAA concerns if a neighbor feels the housing is not warranted.

Ms. Bertotti agreed that is a problem, as is determining whether a caregiver is paid or not. Mr. Stebe inquired whether the caregiver being paid or unpaid is a factor and Ms. Bertotti replied the caregiver must be unpaid.

Mr. Stebe stated that no one on a personal care assistant waiver could be a caregiver. He reported that, in his employment, if an individual has issues with activities of daily living, the State would pay a caregiver for services. Mr. Stebe surmised that an individual receiving State caregiver services would not be eligible, even if it is a relative. Ms. Bertotti responded that they could, as long as the caregiver was not paid by the individual.

Mr. Kennedy stated that, as a practical matter, no one will delve into these questions too deeply. If an individual provides certification that appears valid on its face, that would be accepted. Mr. Kennedy explained one anomaly he envisions and provided an example: The wife's father is disabled and living in the temporary housing unit, then he passes away or moves into a nursing home; at that point, if the husband's mother has become ill, he wondered if they would be allowed to move the mother in.

Mr. Anderson stated that as a practical matter, the Town would not be able to find that out until the year review. Mr. Kennedy commented that when someone is up for review, perhaps the original disabled person is not there anymore but there is another disabled person living in the space.

Mr. Stebe interjected that at that point it would still meet the criteria.

Mr. Anderson reported that the Zoning Enforcement Officer would need certification for the new person.

Mr. Kennedy agreed and questioned whether the structure would need to be removed and then replaced in that instance.

Mr. Anderson expressed his opinion that the Town is quite practical and the Zoning Enforcement Officer would not require the removal and replacement of the structure when another individual moves in.

Attorney O'Neil explained that from what he has read, these structures are built offsite and dropped onto the property. It would be similar to a Pod, he noted. The permit is for the structure itself, he remarked, and the person occupying it, whether it be Person #1 or Person #2 because Person #1 has gone to a nursing home, would just require the same certification that Person #1 required. Attorney O'Neil stated that the certification is by a Connecticut Licensed Physician stating that the person requires assistance with two or more activities of daily living, similar to what people need when going into an assisted living facility. In his opinion, the process would not be difficult. He noted that there is a bond requirement in the event that there is no longer an eligible person residing there and the owner does not remove the structure within the required 120 days. Attorney O'Neil reported that the real question is whether or not the Manchester community, acting first through the Planning and Zoning Commission and then subsequently the Board of Directors, wants to be involved in the process or wants to opt out. The mechanics of it will come to a process that everyone is comfortable with, he described, but he asked if the Commission wants to go through the process of opting out.

Mr. Prause requested confirmation that there is something in the Public Act that states the structure will be removed after 120 days. Attorney O'Neil responded that it is 120 days after the person vacates the structure. Ms. Bertotti reported the structure must be removed within 120 days after and for that, there is a bonding structure.

Mr. Prause stated it is an option; there is nothing that says we can apply a bond. Ms. Bertotti agreed that it is an option, but the bond is so high that it is not feasible if the Town requires a bond for a structure that cost less than the bond.

Attorney O'Neil explained that the Act states "not to exceed;" it is an option for the municipality to require a bond.

Ms. Bertotti said she cannot imagine that a maximum bond would be required.

Mr. Anderson asked Attorney O'Neil how the bond amount would be established. Attorney O'Neil responded that it would be an internal policy. The purpose of the public act is to create a state-wide zoning ordinance so that it would preclude any municipality from enacting their own zoning regulation, he stated.

Mr. Anderson said he assumed that the Town would establish an internal policy.

Attorney O'Neil reported that the Act states that the Town "may require the applicant post a bond in an amount not exceeding \$50,000," which gives Planning and Zoning the internal ability to establish whatever policy it deems correct.

Mr. Prause reported that another option to regulate is whether the structures need to connect with water and electrical. He asked if the Building Department would require that. Mr. Smith replied that in order to make it a habitable structure, those would be required. Mr. Prause surmised that would have to be written in.

Ms. Bertotti reminded the members that the structures do not have to be allowed. Mr. Prause said he understood, but if the Commission does not opt out, that should be a requirement.

Mr. Anderson questioned Mr. Smith if that would be addressed in the building code.

Mr. Prause interjected that the Act states that the municipality may require temporary health care structures to make sure they are accessible to emergency vehicles and be connected to private water, septic, or water and sewer and the electrical utilities that serve the primary residence. It appears that by State law, unless a municipality requires that, an individual could have a structure without running water or electrical, he said.

Mr. Smith explained those facilities would be required in order for it to be habitable. Mr. Prause asked what would require that. Mr. Smith stated that the Building Code has language that speaks to that, but as far as the methodology by which it is connected, water and sewer may have overlay as well.

Ms. Dubanoski reported that the Health Department also has regulations that require water and sewer.

Mr. Prause said he assumed the concern is that this is called a structure and not a residence. Perhaps there needs to be a clarification, he noted. Mr. Smith explained that the Building Department evaluates structures by the nature of use, which is still residential.

Attorney O'Neil reported that there is a provision in the Act saying the structures must comply with the applicable provisions of the State building code, fire safety code and public health code.

Mr. Prause requested clarification that these structures would fall under those provisions. Mr. Smith replied that they will.

Mr. Talbot questioned what would prohibit an individual from attempting to use a travel trailer as a temporary health care structure. It is a registered vehicle, which would take the fire code out of it, and he questioned whether it would take the building code out of it.

Attorney O'Neil reported that a travel trailer is not subject to the State building code and these structures must be subject to the State building code.

Mr. Talbot reiterated that the Act states "would comply with all the applicable provisions of the State building codes," and if it is a registered motor vehicle, it would be exempt from the State building code.

Attorney O'Neil interjected that it would then not comply with the State building code and would not be allowed under the Public Act. He stated that, in his opinion, if it is not subject to the State building code, then it cannot be one of these structures.

Mr. Talbot communicated that, in reviewing the packet, they can be called tiny homes or trailers, but they are registered motor vehicles on dual wheels with LPG tanks. He reported he is not in favor of these structures and would prefer to see the Town opt out until the State refines their definitions. Does the applicant for the permit have to be the tenant of the single family home, he questioned, or can an individual lease out a single-family home and decide to put a temporary structure on the property?

Mr. Kidd stated that he is curious about the trailer as well and questioned what would prevent individuals from using a trailer in this way today. Ms. Bertotti said she believed there are regulations that disallow living in a trailer.

Mr. Kidd referred to the bond and described it as a necessity. He agreed with the Fire Marshal's point about the structure being owner occupied. Someone could rent homes, he stated, and install the temporary housing structures as a business. Mr. Kidd reiterated that the temporary structures should be for a family member and that should be an important criterion.

Mr. Bergin requested clarification as to whether the structure could be leasable. He noted that the law specifies that the care is unpaid, but asked if an RN could own a home, lease a temporary structure to someone, and provide the subsequent care free of charge.

Attorney O'Neil responded that the single-family residence must be owned by the caregiver who is either a relative, legal guardian or a health care agent. In most instances, he explained, the legal guardian or the health care agent is a family member.

Mr. Kidd questioned if there would be a tax issue. He surmised that a shipping container could be renovated into a home but would not be suitable for a back yard. There are many accessory structures that he is not happy with and the aesthetic nature and neighborhood compatibility would be the reason to opt out, he stated, though it would be unfortunate if the Town opts out for that reason. Mr. Kidd reported that he has seen pictures of very nice accessory structures or structures connected to a house, but though it would be temporary, they would be appropriate. He also noted that the structures tend to be expensive, ranging from \$75,000 to \$125,000, and many people will not be able to afford that. Individuals evaluating their options may look to acquire something less expensive, i.e., a Kloter Farms shed for \$25,000, but then that would have to be finished. However, Mr. Kidd surmised, there may not be many individuals constructing a temporary health structure due to the expense, though it would not be fitting to construct a cheap box with no aesthetic value.

Ms. Bertotti continued that she would be more comfortable if the manufacturers rented these structures rather than selling them. An individual purchasing a structure for \$100,000 for a temporary use is difficult to fathom, especially as they would anticipate selling it a few years later.

Mr. Kidd reported he had seen sites for temporary housing rentals which makes perfect sense. He noted that may work in the Town's favor; if a loved one passes away, the owner will not want to have the home on their property and pay the rental.

Mr. Kennedy explained that if an individual has a misconstrued interpretation of the regulation and is then denied, he is not overly concerned about litigation, as it would cost thousands and thousands of dollars for a temporary structure. If there was a window, i.e., opt out now or forever hold your peace, you must do it within 90 days or the Town is stuck with it forever, the Town should take action, he assumed. As it stands now, he described, if the Town receives applications that are not concerning, that would be fine. However, if the Town receives applications that may be a problem or that raise questions not addressed in the past, opting out can be done at that point, Mr. Kennedy observed. If the Planning Department is writing a regulation, many of the points being considered are valid, though we do not have that latitude, he

remarked. If the Town is not concerned that this is a bad idea and the Commission is worried about the details, he said he would be content to wait to see if problems arise and if they do occur, the Town can opt out at that time.

Mr. Bergin agreed with Mr. Kennedy, noting that there are four months in which the Commission can frame a letter articulating all the points that need to be tightened up and send it to the State to ask for changes in the law; between now and May of next year, he said, the Town may not receive a flood of troublesome applications. He suggested proactively determining what can be done beyond just opting out.

Mr. Stoppelman supported Mr. Kennedy's comments, noting that the Town can opt out at any point; the Town can opt out when there are problems, assuming the Commission can get the Board of Directors to agree. There is potential benefit here, he stated, because the temporary housing units are so expensive, even when renting. Considering the high cost of nursing home care, perhaps there will be applications, he surmised. Mr. Stoppelman reiterated that the housing is temporary, there is a 120-day limit after a person leaves the unit, and nothing will be permanent.

Mr. Kidd agreed with Mr. Kennedy and said he liked Mr. Bergin's proposal to draft a letter to the State voicing the areas of concern. He did not anticipate many of the structures being erected at this point, and the Commission can circle back around and revisit it at a later date, he said.

Attorney O'Neil reported that, based on the municipal attorneys' discussions, there have been ample questions similar to the Commission's questions, and he is quite sure the concerns will be presented to the legislature for refinement of the statute. He agreed that the Commission should voice concerns to the state legislators. An industry will arise, in his opinion, though he does not contemplate anyone purchasing the units at \$85,000 - \$90,000 for a brief period of time. Attorney O'Neil said he assumes manufacturers will construct the units to enable re-use many times, which creates a profit motive.

Mr. Stebe echoed earlier statements, and agreed that the idea is a good one. He reiterated Attorney O'Neil's statement that the expense related to purchasing a unit is huge, and would not be achievable for many families. The Commission must fine tune questions to the State, he stated, and also fine tune the current regulations regarding the steps required of applicants. Mr. Stebe described the legislation as loose enough to allow the Commission to establish requirements for the applicants. When the State refines the Act, the Commission can make adjustments, he explained.

Mr. Prause reminded the Commission that, if the Commission takes no action, it would be allowing a structure within 8 ft. to 15 ft. of a residence on a side lot. He gave the example of a neighbor's shed out back being replaced with a mini house. He noted that the Act applies to both physically and mentally impaired individuals. The Commission will have to make the argument that it did not see anything wrong with this, he stated. Mr. Prause conjectured that the Commission is moving toward the idea that it is in support of this. He said that the Town should definitely look into the bonding, and assumed that the Commission could not address that; it would be an administrative policy.

Mr. Anderson affirmed that it would be an administrative policy. He suggested the Planning Department would need to look into the cost of removal of one of the units.

Mr. Prause referred to the issue of the requirement for water and electrical and questioned whether this needs to be clarified in the building code. Mr. Smith stated that this would not need to be clarified.

Mr. Prause supposed that 20 years from now, no one will complain that these structures are not under the building code; i.e., no one could make a reasonable argument that the building code does not apply to these structures.

Mr. Smith reminded the Commission that there is a process under which the Building Department either accepts or reject the proposal, and only after that are they allowed to do the installation.

Mr. Prause reiterated that the Commission considers that these need to be under the building code.

Mr. Smith stated that is specifically called out in the body of language. There would be a new workflow required to basically confirm on a periodic basis that it is, in fact, being used in accordance with the Public Act.

Mr. Prause reaffirmed that he thinks the idea is good, though he could foresee individuals making arguments about why they do not get a say in this; there is no public hearing. Abutters are supposed to get a written notice within three days of the filing of an application, but that is about all they would get. He stated he is a little concerned that this has not been discussed with the public.

Mr. Stebe stated that there is nothing that says the Commission cannot have a public hearing on anything it wants to have a public hearing on.

Attorney O'Neil stated he cannot guide the Commission in that the Public Act was written in a way that, if the Commission were to opt out, it would be a two-step process. It is the Commission's decision, which would then be forwarded to the Board of Directors, similar to the 8-24 process, though it does not have the tie-in in the Public Act, he noted. If the decision is to be that the Town is in because it is not going to opt out, he stated, he questioned whether the Commission feels the need to communicate that to the Board of Directors.

Mr. Kennedy noted that if the Commission decides to have a public hearing on opting out, that could be forwarded to the Board of Directors. Unless the Commission has a hearing and then decides to opt out, there is nothing for the Board of Directors to act upon under the statutes, he noted.

Attorney O'Neil stated that there is no reason not to have a public hearing with the question of whether the Town should opt out or remain in the new Public Act 17-155.

Mr. Kennedy affirmed that the Commission can decide to hold the public hearing, though it does not need to be done now. Because there is no time limit, he noted, the Commission can wait and see how it plays out.

Mr. Kidd noted there will be much conjecture.

Mr. Prause pointed out that there is the Fair Housing Act to prevent discrimination which could not be made part of the argument, he explained.

Mr. Kidd declared it makes more sense to let it go and if problems ensue, there could be a public hearing to bring issues to light to support the decision whether to act or not.

Mr. Kennedy reminded the Commission that all that will be regulated is the structure. People can allow anyone they want to live in their spare bedroom, he noted.

Attorney O’Neil informed the Commission that there may be a joint meeting of the Planning and Zoning Commission with the Board of Directors at some time in the near future on unrelated subjects, and this may be introduced at that meeting to get their feedback. He pondered a situation where the Town does not opt out, some applications come in, and the Board of Directors declares it was not aware of any decision.

Mr. Anderson described the solution as easy. He reiterated that the Board was briefed and he can communicate with the General Manager about the general discussion. In that way, the General Manager will have that information and if the Board has additional interest, the Commission and Planning can move to the next step to determine if there should be a public hearing, he explained.

Mr. Kidd questioned whether Mr. Anderson should suggest that the General Manager formally announce the topic during the Board of Directors meeting.

Mr. Anderson explained it would be sent out in the packet. The General Manager generally shares the issues with at least the mayor and the minority leader and if there is discussion internally, he can convey that, he acknowledged.

MOTION: Mr. Stebe moved to adjourn the workshop. Mr. Kidd seconded the motion and all members voted in favor.

The Chairman closed the workshop at 7:03 PM.

I certify these minutes were adopted on the following date:

Date

Eric Prause, Chairman