



ONE ELMCROFT STAMFORD LLC V. ZONING BOARD OF APPEALS,
213 CONN. APP. 270 (2022)

WHAT'S THE REGULATORY STANDARD FOR A LOCATION APPROVAL?

On June 14, 2022, the Appellate Court released its decision in One Elmcroft Stamford, LLC v. Zoning Board of Appeals, 213 Conn. App. 270 (2022) (“Elmcroft II”), which addresses issues involving the regulatory standard by which a local agency can assess an application for location approval for automotive repair facilities. The absence of any clear standard in state statutes for nearly 20 years has created confusion for both applicants and agencies over the relevant “suitability” considerations, which also arise in the context of gasoline stations. Unfortunately, Elmcroft II does not establish a bright line standard on those issues.

What Approvals Are Involved?

Prior to commencing operations, automotive sales, repair facilities, and gasoline stations (including those co-located with convenience stores) must be licensed by the State of Connecticut. To obtain that license, pursuant to Conn. Gen Stat. § 14-54 (automotive sales and repairs) and § 14-321 (gasoline stations), an applicant must obtain a Certificate of Location Approval (“Location Approval”) from the applicable town agency *in addition to any land use approvals required for the particular use*. The local Zoning Board of Appeals (“ZBA”) is the designated agency for automotive sales/repairers and either the ZBA or planning/zoning commission (as selected by the municipality) is the designated agency for gasoline stations. When acting on a Location Approval application, the town agency is acting as the arm of the state, rather than in its more typical land use role, and traditionally had to assess whether the site in question was “suitable” for the proposed use.

How Did We Get Here?

Prior to 2003, Conn. Gen. Stat. § 14-55 and § 14-321 set forth specific criteria that the town should consider when considering a Location Approval application, commonly referred to as “suitability” factors. For automotive sales and repairs, the standard was the following:

No such certificate shall be issued until the application has been approved and such location has been found suitable for the business intended, with



due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel.

For gasoline stations, the standard was substantially similar:

such location is suitable for the sale of gasoline and other products, due consideration being given to the proximity of schools, churches, theaters or playhouses or other places of public gatherings, intersecting streets, traffic conditions, width of highway and effect of public travel and that such use of such proposed location will not imperil the safety of the public.

In 2003, the Connecticut legislature attempted to modify the process for obtaining a Location Approval to streamline municipal agency review. However, the legislature passed multiple competing acts related to the Location Approval process, one of which resulted in the repeal of the suitability factors, while another substituted them elsewhere in the statutes. The legislative history demonstrates that the goal of the legislative action was to include a Location Approval in the usual land use review process, rather than as a separate step, thus making true repeal likely inadvertent.

In *One Elmcroft's* initial appeal, the Appellate Court found that the repeal had *not* occurred and the suitability factors remained in effect. *One Elmcroft Stamford LLC v. Zoning Board of Appeals*, 192 Conn. App. 275 (2019) ("*Elmcroft I*"). The Supreme Court overturned *Elmcroft I*, ultimately disagreeing with the Appellate Court's analysis of the conflicting acts and found the legislature had in fact repealed § 14-55. *One Elmcroft Stamford LLC v. Zoning Board of Appeals*, 337 Conn. 806 (2021).

On remand, the Appellate Court in *Elmcroft II* was tasked with determining what – if any – standard applies to Location Approval applications. The Appellate Court determined that, in the absence of any statutory criteria, "it is left to municipal zoning boards to determine, in their discretion, the factors relevant to their decision on whether to grant a location approval." The Court found that a board could certainly continue to use the repealed criteria. According to the Court, the only limitation on the local board is that it cannot deprive an applicant of substantial rights, such as a violation of a constitutional or statutory provision, or act in an arbitrary or capricious manner.



So What's Next?

Although Elmcroft II only expressly dealt with an auto repair Location Approval, the dearth of authority or statutory factors will likely result in its analysis being applied to gasoline station applications. Given the lack of specific criteria and the discretion awarded to reviewing agencies, applicants would be wise to give strategic thought as to how the Location Approval fits into the overall regulatory process. Among the considerations are the following:

- The sequence of the required applications deserves consideration: apply for Location Approval before completing the engineering for a site plan approval? Or does an approved special permit and/or site plan bolster likelihood of success for a Location Approval?
- A narrative for a Location Approval should address the repealed suitability criteria (proximity to schools, churches, hospitals, etc.) as well as any other common-sense items that arise with any new commercial use (such as consistency with the zoning regulations and Plan of Conservation and Development; traffic impacts; lighting impacts; and proximity to residential uses).
- While the local board has broad discretion, it is not unlimited. It would be arbitrary and capricious, for instance, to deny an application because the agency did not like the applicant's logo, the color of the building, or the applicant's proposed plantings.
- There is a lot of gray area. For instance, could a board consider a town's "need" for the use – a consideration not typically allowed in land use decision-making – even if the use is allowed in that particular zone? Arguably, yes.
- Many town boards and staff will find this morass to be ambiguous and confusing. Offering guidance on relevant considerations or seeking town attorney involvement may take on greater importance.

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