

CBA LPRC POSITION REQUEST FORM

The CBA Planning & Zoning Section **position request** is as follows:

- 1) Proposed legislative or regulatory concept:

Section 8-8(n) of the General Statutes requires that a Superior Court hearing be held for a land use appeal under § 8-8(b) to be either (a) withdrawn, or (b) settled. Following the hearing, the Superior Court must approve the proposed withdrawal or settlement. **RSB-938** would revise Section 8-8(n) of the General Statutes in the following ways: (a) a Superior Court hearing would no longer be required for the settlement of an appeal, and (b) a hearing on the withdrawal of an appeal would be required only if a defendant objects to the withdrawal of the appeal by filing a written objection with the court within 30 days after the date of filing of the withdrawal.

- 2) Explanation and rationale for advancing this position:

Members of our Section have expressed displeasure with the *requirement* that a Superior Court hearing be held prior to withdrawal or settlement of an appeal. In the interest of judicial economy and as a practical matter, a hearing on a withdrawal should not be automatically required to withdraw a case and instead should only be held if the non-withdrawing party(s) request one. With regard to settlements, if the settlement involves a withdrawal of an appeal, then the hearing could still be requested by the non-withdrawing party(s); and if the settlement requires a judgment to enter, then a party to the case would be required to move for judgment in accordance with the stipulation and the parties have the opportunity to request a hearing on that anyway.

The Section has 2 recommendations to the draft language noted in #3, below.

- 3) Is draft regulation, legislation or proposed bill included?

Yes, the text of RSB-938 is attached to this form.

While the Section supports RSB-938, it has 2 recommendations with respect to the current draft language.

First, as currently drafted, RSB-938 would permit an “aggrieved person” to withdraw such appeal without a court hearing (absent objection filed with the court within 30 days of the date of filing of the withdrawal). We suggest that the language be revised to address an apparent drafting error. A “person” rather than an “aggrieved person” who initiates an appeal should be permitted to withdraw an appeal without the need for a hearing. Not all plaintiffs will be aggrieved. Plaintiffs who are not aggrieved should especially be able to withdraw an appeal without a hearing because the court would not have subject matter jurisdiction to consider their claims. A court should not have to determine whether a party is aggrieved for a case to be withdrawn.

Second, the Section is concerned about the mechanics of having a hearing after withdrawal. The Section proposes language (on the last page of this form) to address this issue.

- 4) What is the date of any legislative hearing, if known?

March 3 before the Judiciary Committee.

- 5) Was this position previously approved by the CBA? If so, when does/did it expire?

No.

- 6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

- 7) Potential or actual CBA opposition from another CBA section or committee?

Unknown.

- 8) Strength of section position (including process and results of section vote taken on issue):

The Planning & Zoning Section polled its Executive Committee, which consists of 51 members, including ex-officio members. The Section received 28 responses from its Executive Committee. All were in general agreement to support RSB-938 subject to the modifications noted.

- 9) Fiscal impact (on the state):

Positive impact – removes the need for a court hearing.

- 10) Are you seeking “fast-track” approval?¹

Yes.

¹ A “fast track” recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.

Substitute Language Recommended by the Planning & Zoning Section -- RSB-938:

An Act Concerning Land Use Appeals.

Be it enacted by the Senate and House of Representatives in Generally Assembly convened:

Section 1. Subsection (n) of section 8-8 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(n) [No appeal taken under subsection (b) of this section shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the Superior Court and such court has approved such proposed withdrawal or settlement.] A person who initiates an appeal pursuant to subsection (b) of this section may file a request to withdraw such appeal. The request shall be deemed to be automatically granted by the judicial authority unless any defendant files a written objection to such withdrawal not later than thirty days after the date of the filing of the request, in which case the court shall hold a hearing to determine whether withdrawal of the appeal shall be permitted.



General Assembly

January Session, 2021

Raised Bill No. 938

LCO No. 3513



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING LAND USE APPEALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (n) of section 8-8 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective October*
3 *1, 2021*):

4 (n) [No appeal taken under subsection (b) of this section shall be
5 withdrawn and no settlement between the parties to any such appeal
6 shall be effective unless and until a hearing has been held before the
7 Superior Court and such court has approved such proposed withdrawal
8 or settlement.] An aggrieved person who initiates an appeal pursuant to
9 subsection (b) of this section may withdraw such appeal and the court
10 shall permit the withdrawal of such appeal without holding a hearing,
11 provided any defendant may object to the withdrawal of the appeal by
12 filing a written objection with the court not later than thirty days after
13 the date of the filing of the withdrawal, in which case the court shall
14 hold a hearing to determine whether withdrawal of the appeal shall be
15 permitted.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2021</i>	8-8(n)
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Statement of Purpose:

To streamline the process involving withdrawal of a land use appeal.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]