DOCKET NO: LND CV-23-6170406-S	:	SUPERIOR COURT
EDWARD PYZNAR, ET AL	:	JUDICIAL DISTRICT
V.	:	OF HARTFORD
PLANNING & ZONING COMMISSION OF THE TOWN OF WINDSOR LOCKS, ET AL	: :	LAND USE LITIGATION DOCKET MAY 20, 2024

MEMORANDUM OF DECISION

In this land use appeal brought by the plaintiffs Edward Pyznar and William (Eric) Marsh, the plaintiffs challenge the approval by the defendant Town of Windsor Locks Planning and Zoning Commission (Commission) of a special use permit and site plan with conditions for a 24-unit senior housing development to be constructed at 64 South Elm Street in Windsor Locks on a 3-acre lot within 100 feet of the Pyznar home and adjacent to the Windsor Locks High School. Marsh's property lies within 160 feet of the land in question. The defendant applicant and owner of the property, M & L Development Corporation, filed for special use permit and site plan approval on February 9, 2023. A public hearing was held on March 13, 2023, and on April 10, 2023, and the Commission deliberated and unanimously approved both the special use permit and the site plan with conditions. Consolidated with this appeal is an appeal by the same plaintiffs of the zone change application for the parcel in question that it had earlier filed. On May 15, 2024, this court dismissed the plaintiffs' appeal. *Pyznar* v. *Planning & Zoning Commission of the Town of Windsor Locks,* Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. LND CV-22-6160413-S (May 15, 2024, *Quinn, J.T.R.).*

The zone change appeal contained some issues, which if sustained, would have made addressing this appeal unnecessary. The court now turns to the special use permit and site application to construct the twenty-four unit senior housing on the parcel. For the reasons set forth in detail herein, this court holds that the Commission acted properly in accordance with the discretion and authority vested in it and properly granted the special permit. The court dismisses this appeal.

I Jurisdiction

While this court made detailed findings about its jurisdiction based on its conclusions about aggrievement in the consolidated companion zone change appeal dismissed on May 15, 2024, the arguments and facts will be repeated here for ease of review. To maintain the appeals and for the court to have jurisdiction, the plaintiffs must first demonstrate that that they are aggrieved by the decision of the Commission. The law is well-established that a plaintiff must have standing to maintain a judicial action and the question of standing implicates the court's subject matter jurisdiction. Furthermore, "[i]t is well settled that [p]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal . . . It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved. . . Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." (Internal quotation marks omitted.) *Wallingford* v. *Zoning Board of Appeals,* 146 Conn. App. 567, 575, 79 A.3d 115, cert. denied, 310 Conn. 964, 83 A.3d 346 (2013).

"In order to prevail on the issue of aggrievement, [t]he trial court must be satisfied, first, that the plaintiff alleges facts which, if proven, would constitute aggrievement as a matter of law, and second, that the plaintiff proves the truth of those factual allegations. . . . The mere statement that the appellant is aggrieved, without supporting allegations as to the particular nature of the aggrievement, is insufficient." (Internal quotation marks omitted.) *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, 266 Conn. 531, 542-43, 833 A.2d 883 (2003).

"A party may have standing to appeal by proving either classical aggrievement, which has a two-part test, or statutory aggrievement." R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 32:4, p. 154. In the present action, statutory aggrievement under General Statutes § 8-8 (b) provides that "any person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located . . . ." In addition, § 8-8 (a) (1), in relevant part, defines "aggrieved person" as "any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board."

A. Edward Pyznar's Aggrievement Claim

It is without contest that the plaintiff Edward Pyznar owns property within one hundred feet of the subject parcel. He, as owner, was competent to and did testify as to his ownership at the hearing. The deeds establishing his title came into evidence. None of the opposing parties contested his testimony. The court takes his ownership as established fact. This court finds therefore that Pyznar owns land that is within one hundred feet of that of defendant's property and that he is aggrieved by the action of the Commission. General Statutes § 8-8 (a) (1) and (b).

Second, both plaintiffs claim they are classically aggrieved by the actions of the Commission. It is unnecessary to determine if Pyznar is classically aggrieved as one established form of aggrievement is adequate to secure his standing.

B. William Marsh's Claim to Aggrievement

Plaintiff William Marsh would not have standing to prosecute this appeal unless the court determines he is classically aggrieved by the action of the Commission. He pled and testified in detail about why he is classically aggrieved. He owns property that is 160 feet from the property in question. He testified that the contemplated twenty-four unit, age-restricted, multifamily housing complex would alter his views and residents would be able to see his property while walking in the neighborhood. There would be additional traffic on the street. Further, he believes that the use of one of his two driveways would be restricted as there is not much visibility and it would be more difficult to back his truck out onto the main road with the increased traffic on the road. He would hear more cars go by. There would likely be litter to clean up on the edge of his property since the town requires it to be cleaned within twenty-four hours. In addition, as both his lot and the subject property are presently mostly wooded and the subject property would be cleared, there would be more noise from both the proposed development and the adjacent high school with broadcast school announcements when the trees are cleared.

Turning now to the law on classical aggrievement, "It is a well-established principle that mere generalizations and fears . . . do not establish aggrievement." *Walls* v. *Planning & Zoning Commission*, 176 Conn. 475, 478, 408 A.2d 252 (1979). "Although one may establish aggrievement by establishing the possibility of harm, mere speculation that harm may ensue is not

an adequate basis for finding aggrievement." (Internal quotation marks omitted.) *Wallingford* v. *Zoning Board of Appeals*, supra, 146 Conn. App. 576. Classical aggrievement involves a two-part determination: "[F]irst, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision." (Internal quotation marks omitted.) *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, supra, 266 Conn. 539.

"[A]s to the quality and quantum of evidence required to establish aggrievement, [the plaintiff] need not establish his or her interest and harm with certainty, but rather, may satisfy the requirement of aggrievement by credible proof that the subject activity has resulted in the possibility of harm to his or her specific personal and legal interest." (Citation omitted; internal quotation marks omitted.) *Wallingford v. Zoning Board of Appeals*, supra, 146 Conn. App. 557. It is well established that, in determining whether a court has subject matter jurisdiction every presumption favoring jurisdiction should be indulged. *Town of Woodbury Historical District Commission* v. *Arras*, Superior Court, judicial district of Litchfield, Docket No. CV-16-6014531-S, 2019 WL 3406775 (June 28, 2019, *Shaban, J.*).

Two areas of concern raised by plaintiff Marsh are worthy of closer consideration as they are not, in the court's opinion, general to all homeowners in the area but more specific to the unique characteristics of his property and his personal and legal interests. The first of those is the increased noise that would impact his use and enjoyment of his property. There would be the noise generated

by the occupants of the elderly housing and their use of outside areas of the facility in good weather. In addition, Marsh points out that the property will be cleared of a good deal of its tree cover and not only will there be noise from the elderly housing, but there will also be increased noise audible from the high school due to the lack of the present tree cover. There are some cases which have found classical aggrievement based on increased noise and impacts which are more specific to the individual claiming aggrievement than to the public at large or others similarly situated. For example, in *Berlani* v. *Zoning Board of Appeals*, 160 Conn. 166, 168-69, 276 A.2d 780 (1970), the court upheld the trial court's determination that aggrievement was established through evidence that the plaintiff as owner of property in close proximity to the defendant's parcel, was specifically and injuriously affected by the noise from the defendant's property where a variance had been granted to use a machine for baling junked automobiles. In *Krejpcio* v. *Zoning Board of Appeals*, 152 Conn. 657, 659, 211 A.2d 687 (1965), the plaintiff's residential property was adjacent to property on which the applicant was permitted to construct a gas station. The Supreme Court upheld the trial court's decision that the plaintiff was aggrieved, as the plaintiff would be directly affected by the noise that would be generated by the permitted use. Id., 660-61. In the present case, although plaintiff Marsh's property does not abut the applicant's property, it is relatively close to it and the noise generated is not speculative in nature, but specific to his property in large part created by the removal of the noise protection otherwise provided by the tree cover which would have been removed.

Under certain circumstances, classical aggrievement can also be based on problems caused by an increase in traffic. However, to prevail on such an argument the plaintiff must show that the

problems caused by the contested conduct reflect particularized, individual interests different from those of the general public. See *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, supra, 266 Conn. 543-44.

Plaintiff Marsh testified that the proposed development would increase traffic in the area and that it would cause specific injury to the plaintiff's use of his property. Specifically, such injury would be due to his inability to use one of the driveways on his property as he has historically enjoyed it, by backing his truck out onto the more heavily traveled road. The two facts in conjunction, rather than simply the increased traffic, demonstrate that the harm is unique to his property and not to others in the neighborhood in general. For the foregoing reasons, the court finds that Marsh has standing as he is classically aggrieved.

C. Conclusion

Both plaintiffs are aggrieved by the Commission's decision, and each has standing to prosecute these appeals: Pyznar is statutorily aggrieved, and Marsh is classically aggrieved. The court also finds from the record that the decision was duly noticed and published, and the appeal timely taken and served in accordance with the law. Thus, the court has jurisdiction to hear this appeal.

II Further Facts and Discussion

The court has carefully considered the arguments of counsel, the detailed record of the proceedings before the Commission, the testimony of the plaintiffs, as well as the briefs filed in this case. As previously noted, the real property which is the subject of this appeal is located at 64

South Elm Street in Windsor Locks on a three-acre lot next to Pyznar's home and adjacent to the Windsor Locks High School. The property has frontage along South Elm Street and, except for its westerly boundary on South Elm Street, is surrounded by the Windsor Locks High School property.[1] The high school property has a driveway to the north, sports fields and the high school building to the east and a path to the south.[2] Pyznar's property is located at 78 South Elm Street, improved with a home, and is within 100 feet of the subject property and by the school path.[3] Marsh's property at 94 South Elm Street is also improved with a home next to a crosswalk that connects Veterans Park and the South Elm Street sidewalk, which runs along the easterly side of South Elm Street.[4] Marsh's property is located 160 feet from the property for which the special permit was proposed.

The defendant filed its application on February 9, 2023, for a special use permit with site plan review for the proposed, senior housing development.[5] The development would consist of twenty-four, single story, colonial style multifamily units in six buildings in the newly established Multi-Family Special Development (MFSD) zone with approximately fifty-seven parking spaces.[6]

The commission held a public hearing on the defendant's application on March 13, 2023.[7] Present at the hearing were members of the public, five Commissioners, the applicant, its lawyer,

[1] Return of Record (ROR), 210-211. Most of the return of record is filed at Docket Entry # 106.00. Each page is stamped consecutively with numbers in the top, right hand corner. For ease of reference, the court cites directly to the stamped page number of these items. The zoning regulations are separately found at D.E. # 104.00 and the court references the page numbers as they were printed in the document, e.g., ROR, D.E. # 104.00, pp. __.
[2] ROR, 210-11.
[3] ROR, 5.
[4] ROR, 5.
[5] ROR, 1-162.
[6] ROR, 26.
[7] A sign was duly posted prior to the hearing providing public notice. ROR, 187-97.

and other members of the team as well as both plaintiffs. On April 10, 2023, the commission deliberated and voted unanimously to approve the special use permit and the site plan with conditions.[8]

A. Standard of Review

Before addressing the issues raised by plaintiffs on appeal, the court turns first to the scope of its judicial review of the special use permit and site plan approved by the Commission. Such actions are administrative decisions of the Commission. *Double I Ltd. Partnership* v. *Plan & Zoning Commission*, 218 Conn. 65, 72, 588 A.2d 624 (1991). The standard of review according to which courts must analyze challenges to administrative decisions of local zoning authorities is well settled. In an appeal to the Superior Court from an administrative agency, the court is to give great deference to the factual determinations and deliberations of a local land use authority.

"In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule, according to which, [c]onclusions reached by [the board] must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [board]. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the [board] supports the decision reached. . . . If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning commission's stated

[8] ROR, 402-403.

rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission. . . . The agency's decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given." (Internal quotation marks omitted.) *Loring* v. *Planning & Zoning Commission*, 287 Conn. 746, 756-57, 950 A.2d 494 (2008). "The burden of proof to demonstrate that the board acted improperly is upon the plaintiffs." (Internal quotation marks omitted.) *Raczkowski* v. *Zoning Commission*, 53 Conn. App. 636, 640, 733 A.2d 862, cert. denied, 250 Conn. 921, 738 A.2d 658 (1999).

B. Issues Raised on Appeal

Plaintiffs raise four issues which they believe support their present appeal of the special use permit and the site plan approved by the Commission. The first concerns the adequacy of the sanitary sewer system to accommodate the flows of the project when built. The second concerns itself with the calculation of a fee in lieu of an open space set aside under the Zoning Regulations of the Town of Windsor Locks (regulations). The third is that the special permit and site plan do not comply with the regulations regarding building separation and site density. Last, they claim that the Commission did not conduct a fair and impartial hearing as it did not properly consider the public's input.

1. The Adequacy of the Sewer System Connection

Specific concerns were raised by members of the public at the public hearing concerning the capacity of the sanitary sewer which would serve the development. Certain members of the

public called for an additional study to assess available capacity of the sanitary sewer line.[9] There were concerns about the size of a downstream junction and the diameter of the pipe at that location. Plaintiffs argue that the public's anecdotal comments concerning the inability of the sanitary sewer system to provide for the flows from the project provided strong evidence to deny the application.

Section 409.D.1 of the regulations, in relevant part, provides that "required public improvements, including . . . sanitary sewers . . . shall conform to the applicable sections of the Subdivision Regulations and the Town of Windsor Locks Public Improvements Manual as amended."[10] The commission and the defendant applicant point out that the applicant submitted a Connecticut Water Company letter confirming the availability of water as well as a letter from the Windsor Locks Water Pollution Control Authority confirming that the system could accommodate the sanitary flows for the twenty-four unit project.[11] The defendants also cite supporting documentation including an analysis done by Paul Dombrowski, the professional engineer working with the Water Pollution Control Authority, that confirmed capacity as of July 2020 for up to sixty units on this site.[12]

Plaintiffs strenuously argue that the Commission should have heeded the negative public comments concerning the claimed sewer capacity downstream of the site and believed the public's assertions and denied the application. But the law and the standard of review for this court on appeal is otherwise, particularly where, as in this appeal, plaintiffs point to no expert testimony to

[9] ROR, 262-63.
[10] ROR, D.E. # 104.00, p. 41.
[11] ROR, 24 and 405, respectively.
[12] ROR, 421.

refute the defendant's materials or the commission's decision. It is well within the commission's purview to consider and rely upon professional experts who report to it from the various agencies otherwise charged with responsibility for the detailed questions raised. See, e.g., *Martland* v. *Zoning Commission*, 114 Conn. App. 655, 665-66, 971 A.2d 53 (2009) (concluding "that the evidence pertaining to the berm as a noise buffer is not substantial because it is not supported by anything other than speculation and conjecture on the part of those objecting to the plaintiffs proposed activities"); see also *American Institute for Neuro-Integrative Development, Inc. v. Town Plan & Zoning Commission*, 189 Conn. App. 332, 345, 207 A.3d 1053 (2019) ("an administrative agency is not required to believe any of the witnesses, including expert witnesses . . . it must not disregard the only expert evidence available on the issue when the commission members lack their own expertise or knowledge").

Moreover, even if a member of the public had been an expert, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. . . . *Evidence of general environmental impacts, mere speculation, or general concerns do not qualify as substantial evidence*." (Emphasis in original; internal quotation marks omitted.) *AvalonBay Communities, Inc*. v. *Inland Wetlands & Watercourses Agency*, 130 Conn. App. 69, 75, 23 A.3d 37, cert. denied, 303 Conn. 908, 32 A.3d 961 (2011); see also R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 33:4, p. 283 ("[w]hile the agency has some discretion in deciding if the criteria for a special permit are met, where there is evidence in the record from expert witnesses for the applicant on technically complex issues such as pollution, the agency cannot deny the permit merely because

neighborhood opponents make unsupported, speculative claims of possible pollution if the permit were approved").

Further, the record reveals that the commission had substantial evidence in the record on which it was entitled to rely to find compliance with those regulations. As previously noted, if such evidence is found in the record, it is not for this court to substitute its judgment or interpretation of the evidence with regard to the commission's decision. See, e.g., *McLoughlin v. Planning & Zoning Commission*, 342 Conn. 737, 752, 271 A.3d 596 (2022).

Finally, as the commission and the applicant-defendant admit in their brief, a permit from the Water Pollution Control Authority will be required to connect to the sewer system. If sewerage infrastructure questions arise at that time, they will then be determined and addressed. Thus, Plaintiffs have not sustained their burden to prove that the commission abused its discretion on this issue.

2. Imposition and Calculation of a Fee in lieu of an Open Space Set-Aside

The second issue raised is that of an open space set-aside to be established under the regulations or a fee to be assessed in lieu of such open space. Plaintiffs argue both that there should have been an open space set-aside and also claim that the fee in lieu of the required open space was improperly calculated. They point out that the members of the public in opposition to the project thought open space would be more beneficial to the seniors that would live in the

proposed development, although its proximity to Veterans Park has been mentioned.[13] Members of the public also disputed the calculation of the fee in lieu of the open space at the hearing.[14]

Defendants counter, pointing out that the regulations regarding open space provide authority for the Commission to determine a fee in lieu of those requirements in a MFSD zone. Section 409.I.3 of the regulations provides: "Fee in lieu: as an alternative to the requirements provided in Sections 409 1.2, above., when a proposal involves a multifamily dwelling residential community, as provided by Section 404, that is proposed on property that: a. has a maximum of five acres; and b. is located within the MFSD zone district, the applicant may provide a fee in lieu of those requirements. The fee in lieu of shall consist of a fee equal to ten (10%) per cent of the market value of the subject property, not including the value of any buildings or structures to be removed. This fee shall be paid into a fund established for the preservation or acquisition of open space."[15] As defendants correctly note, the unambiguous language of the regulation indicates that the amount of the fee is limited to 10 percent of the value of the land prior to the approval of the project in question. General Statutes § 1-2z.

Plaintiffs disagree and argue that the point in time to assess the value of the land was when the zone change was approved in August 2022. They assert that the value of the land increased substantially at that time. Defendants counter that this argument misses the point, as the zone change remained undecided due to plaintiffs' appeal of the approval of the zone change in the companion case to this one. *Pyznar* v. *Planning & Zoning Commission of the Town of Windsor*

[13] ROR, 277, 279-81, 287-90.
[14] ROR, 280-81, 288-90, 298-301.
[15] ROR, D.E. # 104.00, p. 43.

Locks, supra, Superior Court, Docket No. LND CV-22-6160413-S (May 15, 2024). They correctly state that the approvals for the zone change and the special use permit are a two-step process. If the zone change appeal had been sustained, then no special permit could have been granted and there is no project and nothing to value. The court agrees that if that were the case then both of the appeals of the Commission's actions would have to be dismissed, and any subsequent appeal decided, before a fee in lieu of open space could be calculated. This would be a bizarre and unworkable result. See *Red Hill Coalition, Inc*. v. *Town Plan & Zoning Commission*, 212 Conn. 727, 737-38, 563 A.2d 1347 (1989) ("[i]n construing a statute, common sense must be used and courts will assume that [the legislature intended to accomplish] a reasonable and rational result. . . . The unreasonableness of the result obtained by the acceptance of one possible alternative interpretation of an act is a reason for rejecting that interpretation in favor of another which would provide a result that is reasonable. . . . When two constructions are possible, courts will adopt the one which makes the [statute] effective and workable, and not one that leads to difficult and possibly bizarre results." [Citations omitted; internal quotation marks omitted.]). It follows therefore that the time to value the property was at the beginning of the entire process before the zone change was acted upon and as the property then existed in the Residential A and AA zone in which it was then located.

"A local board is in the most advantageous position to interpret its own regulations and apply them to the situations before it." (Internal quotation marks omitted.) *Doyen* v. *Zoning Board of Appeals*, 67 Conn. App. 597, 603, 789 A.2d 478. cert. denied, 260 Conn. 901, 793 A.2d 1088 (2002). Support for the Commission's interpretation and determination is provided by the report

of the Town Planner. Specifically, her report stated, " the applicant has noted they plan to supply the town with a fee in lieu of open space. Per the Assessor's office, the market value of 64 South Elm Street, less any structures, is $123,100. 10 [percent] of that is $12,310."[16]

In the present case, the court concludes that the Commission did not abuse its discretion in interpretating its regulations and calculating the fee in lieu of open space. Its implementation yields a workable result. Additionally, the Commission had substantial evidence in the record in support of the fee assessment. Further, the record in this case contains substantial evidence in support of its determination to implement a fee and not a set-aside of open space. It is not for this court to second-guess that determination. Therefore, the court concludes that the plaintiffs have not met their burden of proof regarding their claims on this issue.

3. Building Separation Distances and Density Calculations

Plaintiffs' third argument is comprised of two parts. The first is that the site plan design of this approved application does not conform with the applicable regulations as it relates to the building separation distances, specifically for building three. Next, they argue that the Commission has not properly calculated the permissible density of the site plan.

a Building Separation Requirements

The arguments about the building separation requirements concern the details of the density requirements in § 409 of the regulations and the application of these regulations to the site plan. Plaintiffs assert that the application cannot meet the exception to the general rules concerning

[16] ROR, 416.

distance between buildings provided for the MFSD zone in § 409.C.4.E. This is based on the fact that one of the buildings has more than four dwelling units.[17] Plaintiffs assert that the general density rules should apply requiring building separation of either forty or fifty feet and that the proposed development cannot meet these requirements.

The Commission and the defendant applicant counter that the applicable regulation is § 409.C.3, and not § 409.C.4.E., as argued by the plaintiffs.[18] Section 409.C.3, in relevant part, provides that "[a] portion of a wall without openings in a principal building shall be at least fifteen (15) feet from another portion of a parallel or opposing wall without openings in another principal building on the same lot, or six (6) feet to a wall without openings in an accessory building . . . ."[19]

Plaintiffs argue that § 409.C.3 does not apply as they perceive a front facing wall with openings to face an end wall with no openings as demonstrated in a schematic printed in their brief. They have then further concluded that the front facing wall with openings in building three is not in compliance with the general rule requiring a greater separation distance from the side wall of other structures.[20] The court includes that schematic of the architectural renderings and the plaintiffs' commentary to it for ease of understanding. The visual image clarifies their meaning which words cannot so easily convey and encapsulates plaintiffs' argument.

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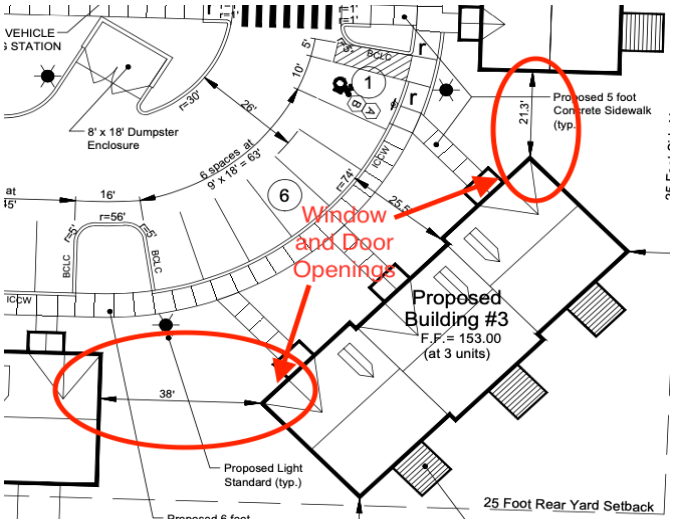
[17] ROR, 6.
[18] ROR, D.E. # 104.00, p. 41. Section 409.C.4.E provides: "Portions of a wall with openings in principal buildings shall adhere to the following distances (see Appendix B, Sketches 4 and 5) . . . In multi-family developments, at least (20) twenty feet to any portion of a parallel or opposing wall with openings in another principal building on the same lot for single family detached dwellings where no more than (4) four dwellings share a common wall and where the maximum height is 2 [and one-half] stories or (30) thirty feet."
[19] ROR, D.E. # 104.00, p. 41.
[20] D.E. # 108.00, p. 23.



Nevertheless, applying the requirement of § 409.C.3. to the architectural drawings supports the defendants' argument. As noted in the record, building three is east of building two, which has five units, and north of building four, which has four units.[21] The end walls of building three and adjacent end walls of buildings two and four have no windows and are slightly offset from each other.[22] This is visible in the architectural drawings which can reasonably be interpreted to show compliance with the applicable regulation. The front facing wall of building three does not directly face the end walls without openings on either side. The Town Engineer and Town Planner commented during the public hearing that the proposed development complied with the fifteen-foot separation required by the regulation.[23]

[21] ROR, 6.
[22] ROR, 6, 21-23. Furthermore, building three is set further back from the driveway.
[23] ROR, 326-27, 416.

Plaintiffs cite certain cases to support their argument that § 409.C.4.E is clear and unambiguous and must be followed. In *Czajkowski* v. *Planning. & Zoning Board*, 14 Conn. App 283, 287-88, 540 A.2d 716 (1988), the court held that the language of the applicable regulations were clear and unambiguous and concluded that the board had not interpreted its regulations correctly and that the lot width was less than what was required. Plaintiffs also cite to *Parker v. Zoning Commission,* 209 Conn. App. 631, 657, 269 A.3d 157, cert. denied, 343 Conn. 908, 273 A.3d 694 (2022), in which the court held that the site plan showed a structure which did not comply with the setback requirements in the regulations.

But reliance on these cases by the plaintiffs is misplaced because § 409.C.4.E is not the applicable regulation. Plaintiffs assert that the end walls without windows of buildings two and four face the front wall with openings of building three. Yet, substantial evidence in the record indicates that the front facing wall with openings of building three does not face nor is it parallel to the end walls of the other two buildings. It is merely offset a bit. Thus, the Commission properly applied § 409.C.3 to find that the site plan met the requirements of the regulation in that the buildings are at least fifteen feet apart.

Plaintiffs' interpretation about which walls are facing the end walls conflates several concepts and flies against the facts contained in the architectural drawings and blueprints. Additionally, the Town's professionals provided expert input to the Commission regarding the separation distance and the application of § 409.C.3. Thus, substantial evidence in the record supports this conclusion. Again, the court cannot substitute its judgment for that of the Commission. See *Loring* v. *Planning & Zoning Commission*, supra, 287 Conn. 756. Moreover, the Commission

did not apply the regulations to the facts of this case in an unreasonable, arbitrary or illegal manner. See *Vivian* v. *Zoning Board of Appeals*, 77 Conn. App. 340, 354, 823 A.2d 374 (2003). The plaintiffs have not met their burden of proof with respect to this claim.

b. Permissible Density of the Proposed Development

Plaintiffs next argue that the proposed development does not meet the density requirements of the regulations in that certain slopes on the site plan are in excess of 15 percent, which areas are to be excluded from the calculations for permissible density. Specifically, they claim that § 404, footnote f, invalidates the calculations made. The footnote provides, "The density of the development in an MFSD zone shall be computed from the 'gross acreage' of the parcel. Gross acreage shall exclude the following areas: areas within a 100 year flood line, wetlands, water courses, detention areas, utility easements, rights of way, or areas with slopes at or in excess of fifteen percent (15%). Computations of density and gross acreage shall appear on the site plan."[24]

Here again, there is a difference of opinion as to when such calculation should be made. The defendants argue that this calculation should be based on the existing conditions before the development, while plaintiffs assert that this would be after development and the post-development condition of the property. Plaintiffs argue that, if the regulations meant to use the pre-development numbers, they would have used the term "developable acre," contained in § 417.E.1.a,[25] not otherwise applicable to this development. Further, plaintiffs assert that, if "gross acreage" is meant

[24] ROR, D.E. # 104.00, p. 37.
[25] ROR, D.E. # 104.00, p. 59.

to refer to the post-development site, then it does not possess the 3.1 acres that are listed on the site plan. Post-development, there will be contours that are greater than 15 percent and a low-lying area which will be used to manage water runoff and will not be useable by residents.[26]

Defendants respond that the Town has regularly interpreted "gross acreage" in the manner that plaintiffs interpret "developable acre." On the record, the Town Planner explained that, if the "gross acreage" were to mean what plaintiffs propose, then an applicant could utilize structures built during the construction such as retaining walls to defeat the exclusion of slopes and other issues, an outcome to be avoided.[27]

The court notes that neither regulation explicitly indicate at what point in time the required calculation should be made. In addition, the adoption of these amendments to the regulations did not occur at the same time,[28] so consistency was perhaps not the concern when the relevant sections were drafted and adopted. As used in § 404 of the regulations, "gross acreage" is not inherently ambiguous, and the interpretation of the Commission, based on the report of the Town Planner and its consistent interpretation over time, not illogical. The argument that the two terms, "gross acreage" and "developable acre" mean something different is also not persuasive. See *Wood* v. *Zoning Board of Appeal*, 258 Conn. 691, 698-99, 784 A.2d 354 (2001).

As previously noted, if the Commission has interpreted its regulations in a reasonable manner, then those conclusions must be upheld by the reviewing court. *Vivian* v. *Zoning Board of Appeals of the Town of Clinton*, supra, 77 Conn. App. 353-54. Adding support for the deference

[26] ROR, 57, 328.
[27] ROR, 327-29.
[28] ROR, D.E. # 104.00, pp. 2-6.

to be given a zoning agency if the interpretation is reasonable, our courts have found that local boards and commissions are in the best position to interpret their own zoning regulations and to apply them. *Doyen* v. *Zoning Board of Appeals*, supra, 67 Conn. App. 603. Furthermore, as the Town Planner pointed out, the plaintiffs' interpretation would lead to a bizarre and unworkable result. See *Red Hill Coalition, Inc*. v. *Town Plan & Zoning Commission*, supra, 212 Conn. 737-38. Plaintiff has not sustained their burden to prove that substantial evidence in the record does not support the Commission's decision or that its interpretation of its regulations was arbitrary, illegal or an abuse of its discretion.

4. Consideration of the Public's Input

Plaintiffs' last claims concern the conduct of the public hearing and whether or not the Commissioners gave proper consideration to the public's input. This argument appears to be based on the notion that the Commissioners did not favorably act upon certain negative comments made at the public hearing. The burden placed on the Commission is that the conduct of a hearing should not violate the fundamentals of natural justice. "Fundamentals of natural justice require that there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary. . . . Put differently, [d]ue process of law requires that the parties involved have an opportunity to know the facts on which the commission is asked to act . . . and to offer rebuttal evidence." (Citations omitted; internal quotes omitted.) *Grimes* v. *Conservation Commission*, 243 Conn. 266, 273-274, 703 A.2d 101 (1997).

The court has found that proper notice was provided. The application, the Town Planner's report, and other documents in the record as well as the public comments of the applicant provide ample facts about the application. The public was permitted to offer rebuttal evidence on the record and to ask questions. As defendants point out in their brief, there were instances of polite responses to questions and to comments by the public as well as considerable restraint exercised when many comments were repeatedly made and were not necessarily on topic. All these facts demonstrate the fairness of the proceedings and that the principles of natural justice were followed. Having reviewed the transcripts of March 13, 2023, and April 10, 2023, the court concludes that the process was fundamentally fair and that plaintiffs have not met their burden of proof on this claim.

IV Conclusion

For all of these detailed reasons, the court concludes that the Commission's granting of the defendant's special use permit and approval of the site plan was substantially supported by the record and was an appropriate exercise of the discretion and authority vested in the Commission. Plaintiffs have not sustained their burden to prove that the Commission's decision was illegal, arbitrary or an abuse of discretion. Accordingly, the court dismisses plaintiffs' appeal.

BY THE COURT,

/s/ 413576
Barbara M. Quinn, Judge Trial Referee