DOCKET NO. TTD-CV-23-6027004-S	:	SUPERIOR COURT
HEATHER M JORDAN, JOSEPH T CONNORS, and HOLLY J WELLS	:	J.D. OF TOLLAND
V.	:	AT ROCKVILLE
TOWN OF COLUMBIA PLANNING AND ZONING COMMISSION and THE BIG WHITE HOUSE, LLC	:	MAY 31, 2024

MEMORANDUM OF DECISION

The plaintiffs, Heather M. Jordan, Joseph T. Connors, and Holly J. Wells, appeal, pursuant to General Statutes § 8-8, from the decision of the defendant Columbia Planning and Zoning Commission (commission) granting a special permit to the defendant The Big White House, LLC, (BWH) allowing for the operation of an event and wedding facility on a residentially-zoned parcel of real property located at 79 Cards Mill Road in the town of Columbia (the property). The court has reviewed the pleadings, the administrative return of record, the parties' briefs, and all other relevant docket entries. The matter was heard by the court remotely on May 6, 2024.

The arguments raised in this administrative appeal focus, principally, on two distinct issues: **(1)** whether the commission's denial of a previous application relating to the same property precluded it from granting the special permit to BWH as a matter of law, and **(2)** whether the commission acted illegally, arbitrarily, or abused its discretion in weighing various concerns related to traffic, flooding, and noise. For the reasons that follow, the court answers both of these questions in the negative and, accordingly, dismisses the plaintiffs' administrative appeal.

STEVEN PAPPAS
ASSISTANT CLERK

Notice of memorandum sent on 5-31-24 to:
Reporter of Judicial Decisions
All counsel of record; JDNO

I. BACKGROUND

The record reveals the following relevant facts and procedural history. BWH's corporate predecessor, Valley Street Investments, LLC, (Valley) submitted an application to the commission on March 28, 2022, seeking a special permit for an event and wedding facility at the property. (ROR, p. 593.) The commission denied that application on July 25, 2022, citing—among other reasons—the following general concerns: **(1)** that increased traffic in the area may be problematic due to narrow roadways and rock outcroppings, **(2)** that there was a possibility of flooding in the area, and **(3)** that noise generated by the activity would have an adverse impact on nearby homeowners. (See ROR, p. 1008: "[It] boiled down to noise, traffic, [and] questions about the flooding"; see also ROR, p. 1003.) It is undisputed that Valley took no appeal from that decision.

After receiving title to the property from Valley, BWH continued to pursue plans for an event and wedding facility on the property by filing a second application for a special permit with the commission on October 27, 2022.[1] Although BWH's application nominally proposed the same buildings in the same locations, various other types of changes were made. First, the maximum number of guests allowed at the

[1]Although the plaintiffs allege in their appeal that BWH was formed to avoid any preclusive effects stemming from the denial of Valley's previous application, neither BWH nor the commission have pointed to that particular distinction as a defense. Indeed, BWH concedes that the principal of both corporate entities is Craig Gates. (BWH's Trial Brief, p. 6.) For the sake of simplicity, the court will analyze the issues presented as if BWH and Valley were the same entity.

facility was reduced from 180 to 160. (ROR, pp. 500, 783.) Second, the revised application limited the number of permissible events to one, single-day event per week.[2] (ROR, pp. 500, 783.) Third, the revised application proposed moving certain boulders along the right of way for Cards Mill Road and relocating a utility pole near the facility's entrance to reduce possible hazards to vehicles. (ROR, pp. 501, 595, 751, 784.)

BWH further buttressed its application with several formal reports related to traffic, noise, and flooding. First, Scott F. Hesketh, a licensed professional engineer with experience conducting traffic impact studies, authored a report concluding that the volume of vehicles expected under the revised application could be safely handled by the existing network of roads in the area. (ROR, pp. 16, 27–28, 795.) Second, a report from Carl Cascio, who holds a PhD in acoustics, indicated that—if constructed as designed—music played inside of the facility[3] would not be audible at the property lines.[4] (ROR, pp. 80, 92, 94, 986.) Finally, a flood study by Normand Thibeault, Jr., a

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[2]The court notes that applicable regulations did already limit timing and frequency of permissible events. See Zoning Regs. of the Town of Columbia § 52.7.5 (e) ("[Event Hours] shall be limited to between 11:00 am. to 11:00 pm. on Thursday, Friday and Saturday and Sundays; there shall be no events on other days or times. A maximum of 15 events shall be allowed per calendar year."); see also ROR, p. 786.

[3]BWH's statement of proposed use indicates that, with the limited exception of "low level background or acoustic music traditionally played for wedding ceremonies" at an outdoor gazebo, all music at its events would be played indoors. (ROR, p. 500.)

[4]To achieve this result, Cascio recommended that: **(1)** windows, doors, and walls be capable of a certain degree of noise attenuation, **(2)** the facility be designed with double doors oriented away from nearby residences, and **(3)** that renters be required to use built-in speakers with a set maximum volume. (ROR, pp. 92, 808–

professional engineer, concluded that the buildings on the property fell outside the one-hundred-year floodplain. (ROR, pp. 176–77, 199–200, 224, 896.)

The commission held a series of four public hearings on BWH's application beginning on January 9, 2023, and ending on March 27, 2023. (ROR, pp. 781, 834, 874, 948, 994.) Attorney Mark Brouillard introduced the application, indicating that it had been revised to address some of the issues the commission had identified with respect to Valley's previous application. (ROR, pp. 782–85.) Greg Glaude, a licensed land surveyor from Killingly Engineering Associates, reviewed BWH's statement of proposed use and presented the project's site plans. (ROR, p. 785.) BWH then called Hesketh, who restated that, in his professional opinion, "the existing roadway network with the few modifications proposed by the applicant . . . has sufficient capacity to accommodate the . . . traffic volumes associated . . . with this development . . . ." (ROR, p. 799.) Later, Thibeault reviewed the flood map contained within his report and explained that it was based on flow calculations derived from a review of FEMA's watershed analysis and various elevation cross-sections from the property. (ROR, pp. 884–86, 981–82.) Thibeault further indicated that his conclusions were consistent with observations made on the site by the property's previous private owners. (ROR, pp. 885, 953.) Finally, Cascio reiterated the bottom-line conclusion from his report that, if

809.) BWH's stated that it would follow these recommendations. (ROR, pp. 500, 790–91.)

constructed as designed, noise generated from inside of the building would not be audible at nearby properties.[5] (ROR, pp. 987–88.)

The commission commenced deliberation on BWH's application on April 10, 2023. (ROR, p. 1000.) At the outset, a motion was made and duly seconded to reject the application "on the grounds that it [was] not substantially different from application previously submitted [by Valley]." (ROR, pp. 1002–1003.) Commissioners' views on the point were split. (Compare ROR, p. 1003 "This . . . application is basically the same as it was submitted before"; with ROR, p. 1004 "I think that the applications are different, and I think that the applicant has gone way out of their way to show effort to correcting or . . . conveying that they are doing the right thing."). A detailed discussion followed concerning the commission's reasons for the previous denial and whether those concerns had been adequately addressed by the revisions made to the new application. (ROR, pp. 1002–1010.) When the chair called the motion to a vote, it failed by a measure of two votes to five votes. (ROR p. 1011.) Ultimately, the commission made the following written, formal finding: "Following the denial of a previous version of a Special Permit application for an event facility at this location under a different applicant name, this proposal has made a number of

[5]During the hearings before the commission opponents of the proposal called Robert Levandoski, a consultant with experience in municipal noise ordinances. (ROR, pp. 955–59.) Levandoski expressed an opinion that Cascio's testing was not conducted in the dry, summer months—when events would likely be held—and that, as a result, the background noise generated by the river may not be as extensive as anticipated. Levandoski further opined that some of Cascio's background noise measurements were not close enough to the property line and lacked sufficient information with respect to the duration of sampling.

specific improvements to the site development details that directly addressed the reasons for denial, including traffic, noise, event frequency, and parking." (ROR, pp. 778, 1026.)

Following a discussion on the merits of the application; (ROR, pp. 1011–1025); a motion was made to find that the proposed use: **(1)** was consistent with the existing and probable future character of the neighborhood, **(2)** provided adequate safeguards to protect adjacent properties from detriments, and **(3)** was consistent with the municipal plan of conservation and development. (ROR, p. 1026.) The motion further found that each of the requirements applicable to special permits for event and wedding venues set forth in § 52.7.5 of the Zoning Regulations had been met. (ROR, pp. 777, 1026.) In making these findings, the motion expressed reliance on Cascio's conclusion that noise levels would satisfy the requirements of § 52.7.5 (g), and Hesketh's conclusion that nearby roads would be able to safely accommodate the resulting increase in traffic. (ROR, p. 779.)

Notwithstanding these findings, however, the motion did expressly condition its approval on the following additional restrictions:

- *There shall be no more than one event on any calendar day*
- *Each day of a multi-day event shall be considered to be a separate event*
- *The owner shall notify the Land Use Department of all events at least thirty (30) days prior to each event*
- *The owner shall have a traffic officer present for at least the first five events*

- *Any changes to the footprint of any of the buildings shall be subject to the approval of the Commission*
- *A certificate of zoning compliance must be issued prior to issuance of a certificate of occupancy*
- *A certificate of zoning compliance shall be issued only after the applicant shall submit documentation demonstrating that the building has been constructed to meet the sound attenuation requirements of the Special Permit approval* (ROR, p. 779.)

The motion was duly seconded; (ROR, pp. 1023–24, 1035); and adopted by the commission. (ROR, p. 1036.) The plaintiffs subsequently appealed from that decision to this court pursuant to General Statutes § 8-8.

II. JURISDICTION

A. Aggrievement

"[P]leading and proof of aggrievement are prerequisites to the trial court's jurisdiction over the subject matter of a plaintiff's appeal." (Internal quotation marks omitted.) *Stauton* v. *Planning & Zoning Commission*, 271 Conn. 152, 157, 856 A.2d 400 (2004). "It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." (Internal quotation marks omitted.) *Office of Consumer Counsel* v. *Dept. of Public Utility Control*, 234 Conn. 624, 637, 662 A.2d 1251 (1995).

There are two types of aggrievement: statutory and classical. *Stauton* v. *Planning & Zoning Commission*, supra, 271 Conn. 157. "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing

to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 487, 815 A.2d 1188 (2003). "Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, 266 Conn. 531, 538–39, 833 A.2d 883 (2003).

The plaintiffs each allege that they are statutorily aggrieved. Specifically, the appeal alleges that Jordan and Connors own a parcel of real property located at 82 Cards Mill Road, and that Wells owns a parcel of real property located at 100 Johnson Road. The plaintiffs further allege that both of those properties are located within one hundred feet of 79 Cards Mill Road. During the hearing before this court on May 6, 2024, the parties stipulated to these facts. On the basis of that stipulation, the court finds that the plaintiffs have sufficiently pleaded and proven statutory aggrievement pursuant to General Statutes § 8-8 (a) (1). See *Lucas* v. *Zoning Commission*, 130 Conn. App. 587, 591, 23 A.3d 1261 (2011) ("Those persons who come within § 8-8 (a) (1) are statutorily aggrieved and are not required to plead and to prove the elements of classical aggrievement.").

B. Timeliness & Service of Process

General Statutes § 8-8 (b) provides: "The appeal shall be commenced by service of process . . . within fifteen days from the date that notice of the decision was published as required by the general statutes." It is undisputed that notice of the decision of the commission's approval was published in a local newspaper on April

17, 2023, and that service of process upon the defendants was properly effectuated on April 28, 2023. On that basis, the court makes a finding that the present appeal was commenced in a timely manner.

II. SCOPE OF REVIEW

Before turning to the claims presented in this particular appeal, the court begins by setting forth the following relevant principles of law guiding its analysis. "A special permit allows a property owner to use his property in a manner expressly permitted by the local zoning regulations. . . . The proposed use, however, must satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience, and property values . . . . Acting in this administrative capacity, the [zoning commission's] function is to determine whether the applicant's proposed use is expressly permitted under the regulations, and whether the standards set forth in the regulations and the statute are satisfied." *Raczkowski* v. *Zoning Commission*, 53 Conn. App. 636, 639, 733 A.2d 862 (1999).

"Review of zoning commission decisions by the Superior Court is limited to a determination of whether the commission acted arbitrarily, illegally or unreasonably. . . . In appeals from administrative zoning decisions, the commission's conclusions will be invalidated only if they are not supported by substantial evidence in the record." Id. "The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [commission] . . . . If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission."

(Citations omitted; internal quotation marks omitted.) *Municipal Funding, LLC* v. *Zoning Board of Appeals*, 270 Conn. 447, 453, 853 A.2d 511 (2004). "The burden is on the [plaintiffs] to demonstrate that the [agency's] factual conclusions were not supported by the weight of substantial evidence on the whole record." *Sams* v. *Dept. of Environmental Protection*, 308 Conn. 359, 374, 63 A.3d 953 (2013).

III. DISCUSSION

A. Impotent to Reverse Rule

The plaintiffs' first claim is that the commission's denial of Valley's previous application precluded the commission from granting a special permit to BWH in the subsequent proceeding. In support of this conclusion, the plaintiffs principally rely on the so called "impotent to reverse" doctrine, arguing that both of the applications submitted were essentially the same in all material respects. The defendants disagree, arguing that the revisions included in BWH's application were sufficient to support the commission's conclusion that the impotent to reverse doctrine was inapplicable. For the reasons that follow, the court agrees with the defendants.

"In many ways, the impotent to reverse rule operates as the administrative agency equivalent of the doctrine of stare decisis. . . . [T]he impotent to reverse rule has governed the conduct of municipal administrative agencies in this state for more than ninety years. . . . [F]rom the inception of [land use regulation] to the present time, [our appellate courts] have uniformly held that a [municipal land use agency] should not ordinarily be permitted to review its own decisions and revoke action once duly taken. . . . Otherwise . . . there would be no finality to the proceeding and the decision

would be subject to change at the whim of the board or through influence exerted on its members. . . .

"At the same time . . . although [f]inality of decision is . . . desirable in the administrative context . . . that principle is by no means inflexible. . . . The impotent to reverse rule thus embodies an important limitation on the ability of an administrative agency to reconsider its prior determinations, while at the same time affording a degree of flexibility in limited circumstances. The rule dictates that an administrative agency cannot reverse a prior decision unless there has been a change of conditions or other considerations have intervened which materially affect the merits of the matter decided. . . . Mere change in conditions or other factors is not enough; only proof of material change permits an agency to reconsider its prior determination. . . . Moreover, the impotent to reverse rule applies . . . only when the subsequent application seeks substantially the same relief as that sought in the former. . . .

"Accordingly, in applying the impotent to reverse rule, a municipal administrative agency must make two distinct factual determinations. The agency must determine (1) whether the application in question seeks substantially the same relief as that sought in a previous application that was decided by that agency and (2) whether a change of conditions or other considerations have intervened that materially affect the merits of the agency's decision on that prior application. . . . Those factual questions must be answered by the municipal administrative agency in the first instance . . . ." *One Elmcroft Stamford, LLC* v. *Zoning Board of Appeals*, 213 Conn. App. 200, 234–36, 277 A.3d 789 (2022). On appeal, an agency's factual findings on

these points are reviewed under the substantial evidence standard. See *Purnell* v. *Inland Wetlands & Watercourses Commission*, 209 Conn. App. 688, 724, 269 A.3d 124, cert. denied, 343 Conn. 908, 273 A.3d 694 (2022); *Bradley* v. *Inland Wetlands Agency*, 28 Conn. App. 48, 51, 609 A.2d 1043 (1992).

In the present case, the commission expressly found that the revisions contained within BWH's application rendered it distinct from Valley's prior application. As noted previously, members of the commission extensively debated the question of whether BWH had done enough to address the previous concerns raised with respect to traffic, noise, and flooding. The commission's decision to answer that question in the affirmative renders application of the impotent to reverse doctrine inappropriate. See *Mitchell Land Co.* v. *Planning & Zoning Board of Appeals*, 140 Conn. 527, 534, 102 A.2d 316 (1953) ("If . . . upon a second request for a special exception, there is a substantial change in the manner of use planned by the owner, the board is faced with an application materially different from the one previously denied. It may well be that the new plan, by reason of the changes made therein, will succeed, where the former failed, in satisfying the conditions enumerated in the regulations. Under such circumstances, the board is not precluded from granting the second application merely because it has denied the first.").

On this point, the court finds *Mitchell Land Co.*, supra, 140 Conn. 529, particularly instructive. In that case, a company sought a special exception to operate an asphalt mixing plant. Id. The company's initial application was denied on the ground that the number of trucks going to the plant each day would lead to dangerous

traffic conditions and that the unloading of sand and gravel would generate a significant amount of dust in the area. Id. The applicant subsequently revised its application to ease traffic issues by relocating the entrance and to reduce dust by wetting down materials. Id., 530 n.1. The agency then approved the revised application. Id. On appeal, the our Supreme Court concluded that the denial of the former application presented no bar to the approval of the latter. Id., 534; see also *Rocchi* v. *Zoning Board of Appeals*, 157 Conn. 106, 111, 248 A.2d 922 (1968) (noting that "the board can grant a second application which has been substantially changed in such a manner as to obviate the objections raised against the original application").

Although the court is sympathetic to the central point raised by the plaintiffs—namely, that the two applications essentially proposed the same structures with the same underlying use—that was also the case in *Mitchell Land Co.* The commission in this case ultimately concluded that BWH had sufficiently addressed the concerns previously raised with respect to noise, traffic, and flooding. On those specific points, the commission explicitly credited the conclusions Hesketh, Cascio, and Thibeault. This court will not revisit those credibility determinations here. *Municipal Funding, LLC* v. *Zoning Board of Appeals*, supra, 270 Conn. 453. The fact that BWH's application fell short of a wholesale revision of the project does not compel the conclusion that the commission was powerless to consider it. See *Grasso* v. *Zoning Board of Appeals*, 69 Conn. App. 230, 246, 794 A.2d 1016 (2002) ("A subsequent [permit] application made in order to bring a prior application into compliance with applicable regulations, no matter how minor the work involved may be, is clearly not

minor in regard to its significance and effect."). As a result, the court concludes that the plaintiffs have failed to sustain their burden of demonstrating that the impotent to reverse doctrine precluded the issuance of a special permit to BWH.[6]

B. Substantive Claims

The plaintiffs' remaining claims, each of which pertain directly to the merits of the commission's decision, are foreclosed by the applicable standard of review. Plaintiffs note that extensive evidence was submitted in opposition to BWH's application in the form of expert testimony, lay witnesses, reports, and photographs. The plaintiffs argue that the proposed project failed to meet the standards set forth in §§ 51.3, 52.4, and 52.7.5 of the Columbia Zoning Regulations. They assert, for example, that there is "no definitive answer" about whether noise will be audible at the property line, that the evidence about flooding is "conflicting," and that the roads in the area are inadequate to handle the increased traffic.

In this procedural posture, it is a sufficient to each of these arguments to simply state that: "If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the

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[6]This conclusion also resolves the plaintiffs' related arguments under the doctrine of collateral estopple. See *Pollansky* v. *Pollansky*, 162 Conn. App. 635, 651, 133 A.3d 167 (2016) ("For collateral estoppel to apply, the issue concerning which relitigation is sought to be estopped must be identical to the issue decided in the prior proceeding." (Internal quotation marks omitted.)). Likewise, the court declines to adopt the plaintiffs' expansive interpretation of the doctrine of res judicata—namely, that the commission was legally foreclosed from relying on any revisions that theoretically could have been included in the prior application—as such an unyielding rule would unsettle the careful balancing of finality and flexibility struck under common law development of the impotent to reverse rule.

evidence for that of the commission." (Citations omitted; internal quotation marks omitted.) *Municipal Funding, LLC* v. *Zoning Board of Appeals*, supra, 270 Conn. 453. As a result, the plaintiffs' substantive arguments must also fail.

IV. CONCLUSION

In summary, the court concludes that: **(1)** the commission's denial of Valley's initial application did not preclude it from subsequently granting the special permit to BWH as a matter of law, and **(2)** the plaintiff has failed to meet its burden of demonstrating that commission acted illegally, arbitrarily, or abused its discretion in its weighing various concerns related to traffic, flooding, and noise. In reaching these conclusions, the court expressly declines to disturb the commissions explicit findings of credibility with respect to the expert witnesses presented.

Accordingly, the plaintiffs' appeal is dismissed.

SO ORDERED

BY THE COURT

SCHIBLEY, J