

DOCKET NO: CV-24-6058223-S

: SUPERIOR COURT

PVG, LLC

: JUDICIAL DISTRICT OF
ANSONIA-MILFORD

V.

PLANNING & ZONING COMMISSION
FOR THE CITY OF SHELTON

: OCTOBER 3, 2025

MEMORANDUM OF DECISION

STATEMENT OF THE CASE

The plaintiff, PVG, LLC, doing business as Rodeo Cannabis, Co., appeals from a decision of the defendant, the Shelton Planning and Zoning Commission. In this decision, commission denied the plaintiff's application to modify a planned development district to permit the retail sale of cannabis at 504 Bridgeport Avenue in Shelton. For the following reasons the appeal is dismissed.

The record of this appeal reveals the following undisputed facts. The plaintiff, a retail cannabis business licensed by the state of Connecticut to sell cannabis, is the applicant and a tenant of part of the property located at 504 Bridgeport Avenue in Shelton (property). The commission, pursuant to its powers set forth in General Statutes § 8-1 et seq. and the Shelton Zoning Regulations (regulations), is an agency charged with the enforcement of those regulations. The property is located within planned development district #48 (the PDD), which is, in turn, located within a special development area of Shelton. Shelton Zoning Regulations, § 34.1. (Return of Record [ROR], p. 278.) Pursuant to § 34.1 of the regulations, each PDD is an "independent zoning district created to accomplish a specific purpose, complete with its unique and narrowly drawn permitted uses and bulk standards and other applicable zoning provisions,

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whether set forth specifically therein or incorporated by reference to the applicable provisions of the overall city-wide zoning regulations. . . .” Shelton Zoning Regulations § 34.1 (ROR, p. 344.)

In order to operate its business in the PDD, the plaintiff filed an application for a modification to the PDD on April 22, 2024.¹ (ROR, p. 98.) The commission received the application at its May 8, 2024 meeting (ROR, Exh. 8, p. 32), at which time it decided to schedule a public hearing on the application. The public hearing was held on June 19, 2024, during which the commission received from the applicant as well as statements from several members of the community who spoke in opposition to the application. (ROR, Exh. 9, pp. 36, 39–42.) After the public hearing was closed on June 19, 2024, the commission voted to adopt a resolution denying the application at its August 28, 2024 meeting, with four members of the commission voting in favor of the resolution and two voting against it. (ROR, Exh. 10, pp. 47–48 [minutes]; p. 109 [transcript].)

The plaintiff subsequently commenced the present appeal to the Superior Court in September 2024, asserting that the decision was arbitrary, illegal, and an abuse of discretion. The defendant filed a return of record on February 10, 2025, and subsequently filed a revised return of record on May 23, 2025. (Entry No. 109.) The plaintiff filed its initial brief on that same date (Entry No. 110), the defendant filed its brief on June 16, 2025 (Entry No. 114), and the plaintiff

¹ Pursuant to § 8 of the Statement of Use for the PDD, adopted by the commission in 2004, the PDD, “consisting of all of the elements set forth herein and all accompanying plans and exhibits, may be modified one or more times upon adoption or subsequently thereto by vote of the Shelton Planning and Zoning Commission, provided that any said modification does not materially change any of the basic elements of the Planned Development District. Any material change in a basic element of the Planned Development District shall constitute an amendment thereto and may be made only upon approval of the Shelton Planning and Zoning Commission following a public hearing on the amendment in the same manner with the same notice as required for adoption of this Planned Development District.” ROR, p. 207.

filed a reply brief on June 18, 2025 (Entry No. 115). On the day of the hearing before this court, June 20, 2025, the parties filed a joint stipulation of facts pertaining to the issue of aggrievement. Based on this stipulation, the court finds that the plaintiff is aggrieved and has standing to maintain this action. Furthermore, based on the undisputed facts and the information of record, the court finds that this appeal was timely filed and was duly served.

DISCUSSION

I

“In traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has acted in its legislative or administrative capacity. The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. . . . Acting in such legislative capacity, the local [zoning] board is free to amend [or to refuse to amend] its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for [or the undesirability of] a change. . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. . . . In contrast, when acting in an administrative capacity, a zoning commission’s more limited function is to determine whether the applicant’s proposed use is one which satisfies the standards set forth in the [existing] regulations and the statutes. . . . In fulfilling its administrative function, a zoning commission is less concerned with the development of public policy than with the correct application of law to facts in the particular

case.” (Internal quotation marks omitted.) *Tillman v. Planning & Zoning Commission*, 341 Conn. 117, 127–28, 266 A.3d 792 (2021). “When a commission is functioning in such an administrative capacity, a reviewing court’s standard of review of the commission’s action is limited to whether it was illegal, arbitrary or in abuse of [its] discretion” (Internal quotation marks omitted.) *Clifford v. Planning & Zoning Commission*, 280 Conn. 434, 440, 908 A.2d 1049 (2006).

“In reviewing a decision of a zoning [commission], a reviewing court is bound by the substantial evidence rule, according to which . . . [c]onclusions reached by [a zoning] commission 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 [commission]. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the [commission] supports the decision reached. . . . 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. . . . The [commission’s] decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given. . . . The substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” (Citations omitted; internal quotation marks omitted.) *McLoughlin v. Planning & Zoning Commission*, 342 Conn. 737, 751–52, 271 A.3d 596 (2022).

“The settled standard of review of questions of fact determined by a zoning authority is that a court may not substitute its judgment for that of the zoning authority as long as it reflects an honest judgment reasonably exercised. . . . The court’s review is based on the record, which includes the knowledge of the board members gained through personal observation of the site . . . or through their personal knowledge of the area involved.” (Internal quotation marks omitted.) *Raczkowski v. Zoning Commission*, 53 Conn. App. 636, 643, 733 A.2d 862, cert. denied, 250 Conn. 921, 738 A.2d 658 (1999).

“When a zoning agency has stated its reasons for its actions, a court should not reach beyond those stated purposes to search the record for other reasons supporting the commission’s decision. . . . Rather, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations.” (Citation omitted; internal quotation marks omitted.) *Harris v. Zoning Commission*, 259 Conn. 402, 420, 788 A.2d 1239 (2002). In the present case, the commission provided a formal, collective statement of the reasons for its decision in the form of a resolution, which it adopted when it voted to deny the plaintiff’s application. (ROR, pp. 98–109.) Accordingly, the court may consider only whether the specific reasons set forth in the commission’s resolution are proper and supported by substantial evidence in the record.²

² In the resolution, which also included a recitation of the history of the application and a summary of the information presented therein, the commission stated that it was denying the application due to (1) its discretionary authority not to modify the PDD; (2) intensity of parking and traffic and (3) the fact that cannabis is a federally illegal drug and that allowing the sale of cannabis would constitute a significant and undesirable change to the uses of the site. With regard to traffic, the resolution explained that there would not be enough parking spaces to accommodate the proposed use because there are only about thirty-two spaces near the building,

II

As previously stated, the plaintiff argues that the appeal should be sustained because the commission's decision was arbitrary, illegal and an abuse of discretion. Specifically, it argues that because there is no evidence in the record disputing that the plaintiff's proposed use is for the retail sale of cannabis products as defined in General Statutes § 21a-420,³ and because retail sales in general are a permitted use under the regulations of the PDD, the commission had no discretion to deny the plaintiff's application. The plaintiff further argues that the commission's position that the plaintiff's application is a "modification" is without merit because retail uses are permitted as a matter of right in the PDD and the regulations include no restrictions on the types of retail uses that are permitted. It also contends that the evidence in the record relating to parking was anecdotal, speculative, and misinterpreted by the commission.

In opposition to the appeal, the commission maintains that its decision not to modify the PDD to allow cannabis sales was within its discretionary authority, that cannabis sales are not a

which would be insufficient to accommodate the projected amount of traffic seeking to park at the site, which includes several other business in addition to the plaintiff's proposed use, that visitors would be forced to walk in or near driving lanes as they walk from the rear parking spaces to the only entrance to the proposed business, located at the front, and that the reconfiguration of the former bank's drive through lanes as tandem parking spaces for employees would create a traffic hazard as the employees pull out of those spaces. With regard to retail sales of cannabis specifically, the resolution stated that because cannabis was an illegal drug that could not be sold at retail when the PDD was created in 2004, allowing such use now "would affect a material change in the originally approved PDD." (ROR, Exh. 11, p. 50; pp. 104-105.)

³ Pursuant to General Statutes § 21a-420 (33), "Hybrid retailer" means a person that is licensed to purchase cannabis and sell cannabis and medical marijuana products" In the plaintiff's proposed Statement of Use, it states in relevant part that it "has a hybrid dispensary cannabis license issued by the State of Connecticut." (ROR, p. 69, Statement of Use § 3.b.) The General Statutes do not include "hybrid dispensary" as a type of cannabis establishment, and the type of license granted to the plaintiff is not clear from the record. Nevertheless, the type of license issued to the plaintiff is not material to the issues presented in this appeal.

permitted retail use in the PDD under the regulations, which were adopted in 2004, when cannabis sales were illegal under federal and state law, and that the consideration of parking and traffic issues were legitimate topics of concern as the commission considered the impacts that cannabis sales would have on those issues.

As a threshold issue, the court must address whether the commission acted in its administrative capacity or its legislative capacity when it decided the plaintiff's application, as the capacity in which the commission acted governs this court's standards of review. Because the application at issue was an application for a modification of the PDD, the commission's decision declining to modify the regulations governing the PDD to allow the plaintiff's proposed use for sales of cannabis as a permitted use in the PDD was made in its legislative capacity. See *Tillman v. Planning & Zoning Commission*, supra, 341 Conn. 128 (“[a]cting in such legislative capacity, the local [zoning] board is free to amend [or to refuse to amend] its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for [or the undesirability of] a change”). That decision was made in the commission's legislative capacity because it was deciding, as a matter of policy, whether the plaintiff's proposed use should be allowed in the district. In denying the application to modify the PDD, therefore, the commission had broad discretion to determine, as a matter of policy, whether to amend its regulations to allow the proposed use, rather than to determine whether the proposed use would be a permitted use under the existing regulations.⁴

⁴ In its application for a modification to the PDD, the applicant included a proposed “Statement of Use,” which would expressly allow, inter alia, the following specific use in the PDD: “The proposed use is for a retail cannabis store of approximately 2,000 [square feet] in a portion of the existing building in which Liberty Bank was located. The existing drive-thru lanes will be for employee only tandem parking.” (ROR, p. 69, Statement of Use § 3.a.) That document

Prior to its filing of the application for modification, the plaintiff had applied for a certificate of zoning compliance, through which it sought to establish that retail sale of cannabis is a permitted use within the PDD. (ROR, Exh. 1, pp. 1–7.) The commission determined that retail sale of cannabis was not a permitted use under the existing regulations and rejected that application. (Id.) The plaintiff did not appeal that decision. Instead, the plaintiff chose to file an application for a modification of the PDD to accommodate its proposed use.⁵ In the present action, the plaintiff attempts to challenge the commission’s determination that the retail sale of cannabis is not a permitted use in the PDD, but that issue is not properly before the court, as the plaintiff did not file an appeal of that decision and cannot collaterally attack that decision through an appeal of the commission’s subsequent legislative decision not to modify the PDD. The law is well established that “one may not institute a collateral action challenging the decision of a zoning authority.” (Internal quotation marks omitted.) *George v. Watertown*, 85 Conn. App. 606,

further specifies, among other details, that “[h]ours of operation will be 9am to 9pm seven days a week.” (ROR, p. 69, Statement of Use § 3.d.)

⁵ During the public hearing before the commission on June 19, 2024, Attorney Dominick Thomas, the attorney for the plaintiff, explained that the reason for its application for a modification was not that it believed that any modification was necessary. Rather, he explained the plaintiff applied for a modification to accommodate the opinion expressed by the town’s attorney. He explained: “The original application was, as I felt, was appropriate because this is - - was an application for certificate of zoning compliance. This application for this use is a retail use in Planned Development District 48. Planned Development District 48, which was approved, I believe, in 2004, contained a series of uses, one of which is retail uses. And this is a retail use, a new retail use because of the changes in the Connecticut State Law allowing the retail sale of cannabis. It is, in fact, no different than if a liquor store had come in, and it is no different in this location in the bank building, as the other half of the bank building where the bank was located, when this Commission approved a tobacco store. However, an opinion was rendered that since the initial application was going to use the old bank drive thru as a pickup window, an opinion was rendered that that required a modification of the PDD. While I disagree with that opinion, we just simply said it would be easier to simply file. So, we filed for - - we had to write a minor modification.” (ROR, pp. 114–15.)

610, 858 A.2d 800, cert. denied, 272 Conn. 911, 863 A.2d 702 (2004). “It is a settled principle of administrative law that if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter. . . . [Our appellate courts] have frequently held that where a statute has established a procedure to redress a particular wrong a person must follow the specified remedy and may not institute a proceeding that might have been permissible in the absence of such a statutory procedure.” (Internal quotation marks omitted.)

Bochanis v. Sweeney, 148 Conn. App. 616, 623–24, 86 A.3d 486, cert. denied, 311 Conn. 949, 90 A.3d 978 (2014). Because the plaintiff chose to file a new application for a modification of the PDD and did not directly challenge the commission’s determination that its proposed use was not permitted in the zone, this court lacks jurisdiction to review that determination in this appeal.

The court is limited, therefore, to a consideration of whether the commission’s decision denying plaintiff’s application to modify the PDD, a decision made in its legislative capacity, was a proper exercise of the commission’s discretion. “In such circumstances, it is not the function of the court to retry the case. Conclusions reached by the commission 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 agency. The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached. . . . The action of the commission should be sustained if even one of the stated reasons is sufficient to support it.” (Citation omitted)

Burnham v. Planning & Zoning Commission, 189 Conn. 261, 265, 455 A.2d 339 (1983).

A review of the record reveals that the commission’s decision is reasonably supported by the record. As noted previously, the commission has wide discretion to determine, as a matter of

policy, whether permitting the use of the property within the PDD for cannabis retail sales is necessary or desirable for the community in which it is located. *Tillman v. Planning & Zoning Commission*, supra, 341 Conn. 128. The record contains numerous letters, as well as statements made at the public hearing, by various elected officials and members of the public in Shelton expressing their opinions and reasons why they believed that permitting such a use would not be desirable or beneficial to the community. (ROR, Exhs. 19–25, pp. 73, 75–76, 89–92; pp. 169–88.) No member of the public spoke in favor of the application. Substantial evidence in the record, therefore, supports the commission’s legislative decision not to modify the PDD because permitting the proposed use in the PDD would not be in the public interest.

With respect to the commission’s parking and traffic concerns, these concerns are reasonably supported by the record as well.⁶ In its presentation to the commission, the plaintiff provided calculations showing that parking demand for its proposed use would require approximately eleven parking spaces at peak hours and peak trip generation of about thirty-eight trips per hour. (ROR, p. 82.) The plaintiff’s proposed plans depict twenty-three parking spaces in front of the building and ten spaces behind the building, plus the six proposed tandem employee-only parking spaces, to accommodate all of the tenants and visitors of the subject

⁶ The plaintiff relies, in part, on *Pansy Road, LLC v. Town Plan & Zoning Commission*, 283 Conn. 369, 926 A.2d 1029 (2007), to support its argument that the commission’s consideration of traffic considerations was improper. That reliance is misplaced. In *Pansy Road*, the Supreme Court reiterated that there is a conclusive presumption that a proposed use that is permitted in the zone will not adversely affect traffic within the zone and therefore cannot be denied on the basis of off-site traffic considerations. *Id.*, 379–80. In the present case, however, the plaintiff’s application seeks a modification of the PDD to allow a new use, not approval for a permitted use, so that presumption is not applicable. Moreover, the regulations expressly permit the commission to consider traffic consequences in approving a PDD. (Shelton Zoning Regulations § 34.5.2, 34.9; ROR, pp. 347–51.)

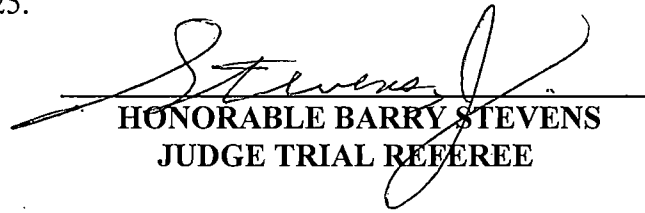
property, which, as noted previously, includes several other businesses. (ROR, p. 96.) The plaintiff's proposal notes that it intends to have approximately ten employees working at the premises at any given time (ROR, p. 69, Statement of Use § 3.c.), only six of whom would be able to use the designated employee parking spaces. In its resolution, the commission explained its concern that the scarcity of parking could cause customers to park behind the building. It explained that visitors parking behind the building would be required to walk around the building and in or near the driving lanes in order to reach the front entrance, the only public entrance to the plaintiff's business, and that this could create a safety hazard for those customers. (ROR, pp. 102–104.) Although the plaintiff notes that parking is shared throughout the PDD, and that visitors may be able to park in other shared spaces adjacent to other buildings and safely walk to the subject property, the commission's traffic concerns are reasonably supported by the record, and the court may not substitute its judgment for that of the commission. See *McLoughlin v. Planning & Zoning Commission*, supra, 342 Conn. 751.

The final reason provided in the commission's resolution denying the plaintiff's application is that the commission has discretion to deny applications seeking approval of new uses in the PPD and, because cannabis was an illegal drug at the time the PDD was created, amending the PDD to permit retail sales of cannabis would therefore constitute a material change to the PDD. In short, contrary to the plaintiff's position, this explanation of the commission's decision is supported by substantial evidence in the record and falls well within the reasonable exercise of the commissions' discretionary authority.

CONCLUSION

Therefore, for these reasons, the commission's reasons for its denial of the plaintiff's application are supported by substantial evidence in the record and the court will not substitute its judgment for that of the commission. The court concludes that the decision was not arbitrary, illegal, or an abuse of discretion. Accordingly, the appeal is dismissed.

Dated this 3rd day of October 2025.



HONORABLE BARRY STEVENS
JUDGE TRIAL REFEREE