

RETURN DATE: MARCH 14, 2023 : SUPERIOR COURT

JACK ZAMARY, DAVID RUSSELL,
JAY MULLIGAN, DONNA MULLIGAN,
VINCENT CATELOTTI, LYNNE
CATELOTTI and PETER JAQUAY : J.D. OF MIDDLESEX

v. : AT MIDDLESEX

BUDR HOLDING 3, LLC, BUDR HOLDING 3,
LLC c/o DERRICK GIBBS, 755 BOSTON
POST ROAD, LLC and TOWN OF
WESTBROOK ZONING COMMISSION : FEBRUARY 1, 2023

COMPLAINT AND APPEAL

THE SUPERIOR COURT OF THE STATE OF CONNECTICUT, JUDICIAL
DISTRICT OF MIDDLESEX TO BE HELD AT MIDDLETOWN comes JACK ZAMARY
of 42 Bellstone Avenue, Westbrook, Connecticut ("Zamary"), DAVID RUSSELL of 4
Post Avenue, Westbrook Connecticut ("Russell"), JAY MULLIGAN of 18 Lynne
Avenue Ext., Westbrook, Connecticut ("Jay Mulligan"), DONNA MULLIGAN of 18
Lynne Avenue Ext., Westbrook, Connecticut ("Donna Mulligan"), VINCENT
CATELOTTI, 32 Lynne Avenue Ext., Westbrook, Connecticut ("Vincent Catelotti"),
LYNNE CATELOTTI, 32 Lynne Avenue Ext., Westbrook, Connecticut ("Lynne
Catelotti") and PETER JAQUAY, 22 Lynne Avenue Ext., Westbrook, Connecticut

("Jaquay")(hereinafter collectively "plaintiffs") appealing from the action of the defendant TOWN OF WESTBROOK ZONING COMMISSION (hereinafter the "Commission") in approving a special permit application (File #ZC2022-017) of BUDR HOLDING 3, LLC for a cannabis retail establishment in an existing building at 755 Boston Post Road in Westbrook, Connecticut (hereinafter the "Project") and the plaintiffs complain and say:

1. The plaintiff, **JACK ZAMARY**, is the owner of real property located at 42 Bellstone Avenue in Westbrook, Connecticut, and is classically aggrieved.
2. The plaintiff, **DAVID RUSSELL**, is the owner of real property located at 4 Post Avenue in Westbrook, Connecticut, and is classically aggrieved.
3. The plaintiffs, **JAY MULLIGAN and DONNA MULLIGAN**, are the owners of real property located at 18 Lynne Avenue Ext. in Westbrook, Connecticut, which is within one hundred (100) feet of the Project and are therefore statutorily aggrieved.
4. The plaintiffs, **VINCENT CATELOTTI and LYNNE CATELOTTI**, are the owners of real property located at 32 Lynne Avenue Ext. in Westbrook,

Connecticut, which is within one hundred (100) feet of the Project and are therefore statutorily aggrieved.

5. The plaintiff, **PETER JAQUAY**, is the owner of real property located at 22 Lynne Avenue Ext. in Westbrook, Connecticut, which is within one hundred (100) feet of the Project and is therefore statutorily aggrieved.
6. The defendant, **BUDR HOLDING 3, LLC (“BUDR”)**, is the applicant in special permit application ZC2022-017 before the Town of Westbrook Zoning Commission seeking approval for a cannabis retail establishment in an existing building at 755 Boston Post Road in Westbrook, Connecticut.
7. The defendant, **BUDR HOLDING 3, LLC c/o DERRICK GIBBS**, is the applicant in special permit application ZC2022-017 before the Town of Westbrook Zoning Commission seeking approval for a cannabis retail establishment in an existing building at 755 Boston Post Road in Westbrook, Connecticut.
8. The defendant, **755 BOSTON POST ROAD, LLC**, is the owner of the real property located at 755 Boston Post Road in Westbrook, Connecticut.
9. The defendant, **TOWN OF WESTBROOK ZONING COMMISSION (“Zoning Commission”)**, is the agency empowered under the Connecticut General

Statutes and the Zoning Regulations of the Town of Westbrook to authorize special permits pursuant to the Westbrook Zoning Regulations.

10. In accordance with the authority granted by Conn. Gen. Stat. §8-2, the Zoning Commission has adopted zoning regulations and has adopted a set of retail cannabis establishment regulations.
11. The defendant 755 Boston Post Road, LLC's real property, as aforesaid, is the subject of the special permit from which this appeal lies.
12. The plaintiffs' properties and the property at 755 Boston Post Road are within the Neighborhood Commercial District ("NCD") of the Town of Westbrook.
13. On or about October 24, 2022, the defendant Zoning Commission received an application ("ZC2022-017") from the defendant BUDR for a special permit to operate a retail cannabis establishment at the defendant 755 Boston Post Road, LLC's real property at 755 Boston Post Road in Westbrook, Connecticut in the aforesaid NCD zone.
14. On or about November 28, 2022 and December 19, 2022, the Zoning Commission held public hearings on the aforesaid special permit application, at which time the Zoning Commission received testimony and evidence from

the applicant and/or its agent, as well as testimony and evidence in opposition to the special permit application.

15. On January 23, 2023, the defendant Zoning Commission approved the special permit application with 18 conditions by a vote of four members in favor of approval and one member opposed.
16. Notice of the defendant Zoning Commission's decision was published in the Hartford Courant on January 26, 2023.
17. In approving BUDR's special permit application, as aforesaid, the Zoning Commission acted illegally, arbitrarily, unreasonably and in abuse of discretion in that:
 - a. pursuant to Zoning Regulation §6.S.2.1.2 the record fails to establish that there is sufficient loading and unloading space in the rear of the subject structure especially when taking into account encumbrances on the property, the need for emergency vehicle access and the obstruction of active driveways;
 - b. pursuant to Zoning Regulation §9.E.5 the record fails to establish that, after taking into account the parking spaces proposed by the applicant,

there would be adequate access to the property for the purpose of fire protection, police protection and emergency equipment;

- c. pursuant to Zoning Regulation §6.S.2.1.2, the record fails to establish that sufficient parking spaces are available for the proposed cannabis retail establishment taking into account:
 - i. that although BUDR plans to require some or all of its employees, agents and servants to park offsite (approximately one mile away), the Zoning Commission did not require such offsite parking in its approval; and
 - ii. other uses at 755 Boston Post Road including residential apartments and a laundromat.
- d. although BUDR's proposed parking and circulation plan contained no exterior modifications to the site, the Zoning Commission, in its conditional approval of the special permit application, required extensive exterior site modification that will negatively impact parking and circulation including:
 - i. moving, but not eliminating, the location of an on-site

- dumpster to the extent that overhead utility wires are unable to be relocated; and
 - ii. completion of site improvements previously ordered in Special Permit Application ZC2017-0016 (but never completed) including landscaping islands, parking spaces, paving, curbing, dumpster location and screening and landscape buffering;
- e. Zoning Regulation §7.A.2 requires landscaping in the NCD zone beyond that proposed by BUDR or approved by the Zoning Commission.
- f. the Zoning Commission failed to acknowledge that no fewer than 8 of the site's parking spaces are owned by the State of Connecticut and are leased to the owner of the premises, 755 Boston Post Road, LLC, with, among other provisions, the following lease provisions:
 - i. no improvements may be made to the subject premises without first obtaining an encroachment permit from the State of Connecticut Department of Transportation;

- ii. the lease may be terminated at any time, with or without cause, by either party upon thirty (30) days' notice; and
 - iii. the lease requires that the portion of the premises owned by the State of Connecticut is designated for transportation use under relevant provisions of the Federal Aid Highway Act and that all other uses by the defendants' are temporary and subordinate, but the Zoning Commission did not consider the implications of these requirements in their decision.
- g. BUDR provided a traffic study to the Zoning Commission but admitted in its December 15, 2022 memorandum to the Zoning Commission that "useful counts of actual traffic could not be obtained in the limited time frame". In its motion to approve the special permit application, the Zoning Commission stated that the minimum sight line distances for the site were 588 feet and that the site has sight line distances of 600 feet in both the west and east directions. The Zoning Commission ignored the conclusions of BUDR's engineer who submitted information that the

sight line looking to the west was 495 feet and, looking to the northeast, was 517 feet thereby rendering both sight lines non-compliant. Further, the Zoning Commission failed to take into consideration reduction of sight lines to be created by the exterior site improvements that it ordered as referenced in its conditional special permit approval and that are further required within the Neighborhood Commercial District regulations;

- h. BUDR's member Derrick Gibbs testified that he anticipated that the proposed retail cannabis establishment would generate an additional 200 to 300 cars per day to the site. The applicant's traffic engineer theorized that the proposed retail cannabis establishment would generate an additional 380 trips to the site per day, meaning 190 additional cars arriving and 190 additional cars leaving per day. In view of this information, the Zoning Commission failed to acknowledge that Zoning Regulation §3.A.2 states that, "The purpose of the Neighborhood Commercial District is to promote a flexible mix of residential and commercial uses that are innovative and compatible with the New England village-scale streetscape; **do not generate large**

volumes of traffic; and are constructed of materials that preserve the residential character of the area.” (Emphasis added.)

- i. in considering any special permit application and pursuant to Zoning Regulation §9.E, the Zoning Commission must give due consideration to the report received from Westbrook's Planning Commission. The Westbrook Planning Commission reviewed this special permit application but did not recommend approval. The Zoning Commission failed to give due consideration to the Planning Commission's report.
- j. although Zoning Regulation §6.S.2.1.1.a prohibits a retail cannabis establishment within the same building as any child day care facility and shall not be adjacent to any park, playground or public or private school, the Zoning Commission ignored both the text and the intent of this regulation by approving the special permit in a building containing a laundromat wherein children routinely visit, apartments where children live and may live in the future and allowed conditional loading and unloading of cannabis at this site despite the fact that it is a school bus stop.

- k. the sole member of 755 Boston Road, LLC is Nancy B. Pytlik. The registered agent of service for this company is George K. Pytlik with a registered agent's address of 755 Boston Post Road in Westbrook, Connecticut. George Pytlik, Jr. is an alternate on the Westbrook Zoning Commission and was not a voting member on this special permit application. However, in its July 25, 2022 adoption of cannabis regulations, including the inclusion of the NCD zone (including 755 Boston Post Road), George Pytlik, Jr. voted to approve even though the NCD zone is not an appropriate zone for such use.
 - l. no Zoning Commission member who voted to approve this special permit application stated any reason for this decision beyond the text of the motion in violation of Zoning Regulation §9.E.4.8.
 - m. before approving the special permit, the Zoning Commission did not determine that the application satisfied the special permit criteria of Zoning Regulation §9.E.5 in violation of Zoning Regulation §9.E.4.4.b.
18. In making its decision, the Zoning Commission acted upon an incomplete application from BUDR and rather than requiring a complete application,

instead granted the special permit and made the filing of completed materials a condition of the approved special permit.

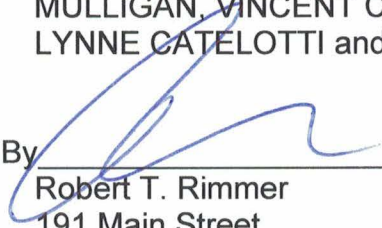
19. The plaintiffs are aggrieved by the decision of the Zoning Commission as aforesaid in that the Zoning Commission:
 - a. failed to enforce the requirements of the Zoning Regulations;
 - b. failed to enforce the requirements of the Retail Cannabis regulations;
 - c. failed to enforce the requirements of the Neighborhood Commercial District;
 - d. decided the special permit application upon factors not contained in the Zoning Regulations;
 - e. failed to require compliance with the Zoning regulations;
 - f. failed to require compliance with the Retail Cannabis regulations;
 - g. failed to require compliance with the Neighborhood Commercial District regulations;
 - h. improperly interpreted the Zoning Regulations;
 - i. improperly interpreted the Cannabis Retail Regulations;

- j. improperly interpreted the Neighborhood Commercial District Regulations;
- k. improperly interpreted the Special Permit Application Regulations;
- l. rendered a decision that was not supported by the record;
- m. the Zoning Commission's special permit approval was clearly erroneous; and
- n. the Zoning Commission's approval of the special permit was arbitrary, capricious, an abuse of discretion unreasonable and/or contrary to law.

WHEREFORE, the plaintiffs claim:

1. The appeal be sustained and the decisions of the Westbrook Zoning Commission be declared to be null and void;
2. Judgment reversing the January 23, 2023 decision of the Westbrook Zoning Commission or, in the alternative, remanding the matter to the Westbrook Zoning Commission with instructions to deny the requested special permit;
3. The award of costs as provided by the Conn. Gen. Stat. §8-8(l); and
4. Such other and further relief as this Court may deem proper.

PLAINTIFFS, JACK ZAMARY, DAVID
RUSSELL, JAY MULLIGAN, DONNA
MULLIGAN, VINCENT CATELOTTI,
LYNNE CATELOTTI and PETER JAQUAY

By 
Robert T. Rimmer
191 Main Street
Old Saybrook, CT 06475
Tel: 860-388-9364
Fax: 860-388-9365
Juris No. 413537