

RETURN DATE: MARCH 28, 2023 : SUPERIOR COURT

CHRISTOPHER P. CESTARO and
STRATEGIC ACQUISITIONS-GM, LLC : J.D. OF MIDDLESEX

v. : AT MIDDLESEX

FFDN EJV, LLC, BANTRY BAY
VENTURES, LLC and TOWN OF OLD
SAYBROOK ZONING COMMISSION : FEBRUARY 23, 2023

CITATION AND SUMMONS

TO ANY STATE MARSHAL OF MIDDLESEX COUNTY, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby
commanded to summon:

1. **FFDN EJV, LLC**, a limited liability company organized and existing pursuant to the laws of the State of Connecticut, with an office at 40 Woodland Street, Hartford, Connecticut to appear before the Superior Court for the Judicial District of Middlesex at 1 Court Street, Middletown, Connecticut 06457 on March 28, 2023, then and there to answer unto the foregoing complaint and appeal with a return date of March 28, 2023 of CHRISTOPHER P. CESTARO, of 280 Boston Post Road, Old Saybrook, Connecticut, and STRATEGIC ACQUISITIONS-GM, LLC, of 210 Boston Post Road, Old Saybrook, Connecticut; by serving upon **FFD NEWINGTON, LLC**, the agent for

service of process of FFDN EJV, LLC at 40 Woodland Street, Hartford, Connecticut 06105, a true and attested copy of the complaint and appeal and of this citation and summons at least twelve days before the return day, in the manner provided by law for the service of civil process;

2. **BANTRY BAY VENTURES, LLC**, a limited liability company organized and existing pursuant to the laws of the State of Connecticut, with an office at 40 Woodland Street, Hartford, Connecticut to appear before the Superior Court for the Judicial District of Middlesex at 1 Court Street, Middletown, Connecticut 06457 on March 28, 2023, then and there to answer unto the foregoing complaint and appeal with a return date of March 28, 2023 of CHRISTOPHER P. CESTARO, of 280 Boston Post Road, Old Saybrook, Connecticut, and STRATEGIC ACQUISITIONS-GM, LLC, of 210 Boston Post Road, Old Saybrook, Connecticut; by serving upon **ERIC ZACHS**, the agent for service of process of Bantry Bay Ventures, LLC at 40 Woodland Street, Hartford, Connecticut 06105, a true and attested copy of the complaint and appeal and of this citation and summons at least twelve days before the return day, in the manner provided by law for the service of civil process; and

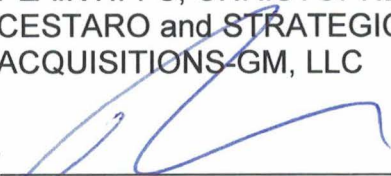
3. **TOWN OF OLD SAYBROOK ZONING COMMISSION**, to appear before the Superior Court for the District of Middlesex at 1 Court Street, Middletown, Connecticut 06457 on March 28, 2023, then and there to answer unto the foregoing complaint and appeal with a return date of March 28, 2023 of CHRISTOPHER P. CESTARO, of 280 Boston Post Road, Old Saybrook, Connecticut, and STRATEGIC ACQUISITIONS-GM, LLC, of 210 Boston Post Road, Old Saybrook, Connecticut; by serving upon **THE TOWN CLERK OF THE TOWN OF OLD SAYBROOK, SARAH V. BECKER, OR HER DESIGNATED AGENT**, at 302 Main Street, Old Saybrook, Connecticut 06475 two true and attested copies of the complaint and appeal and of this citation and summons at least twelve days before the return day, in the manner provided by law for the service of civil process;

I hereby certify that I have personal knowledge of the financial responsibility of the plaintiffs and deem it sufficient to pay the costs of this action.

Hereof fail not, but of this writ, with your doings thereon, due service and return make.

Dated at Old Saybrook, Connecticut this 23rd day of February, 2023.

PLAINTIFFS, CHRISTOPHER P.
CESTARO and STRATEGIC
ACQUISITIONS-GM, LLC

By 

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

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CHRISTOPHER P. CESTARO and
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v. : AT MIDDLESEX

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SAYBROOK ZONING COMMISSION : FEBRUARY 23, 2023

COMPLAINT AND APPEAL

TO THE SUPERIOR COURT OF THE STATE OF CONNECTICUT, JUDICIAL DISTRICT OF MIDDLESEX TO BE HELD AT MIDDLETOWN comes

CHRISTOPHER P. CESTARO of 280 Boston Post Road, Old Saybrook, Connecticut and STRATEGIC ACQUISITIONS-GM, LLC of 210 Boston Post Road, Old Saybrook, Connecticut appealing from the action of the defendant TOWN OF OLD SAYBROOK ZONING COMMISSION (hereinafter the "Zoning Commission") in granting special exception approval to FFDN EJV, LLC and BANTRY BAY VENTURES, LLC for a cannabis dispensary facility (adult use) at 233 Boston Post Road in Old Saybrook, Connecticut (hereinafter the "Project") and the plaintiffs complain and say:

1. The plaintiff, **CHRISTOPHER P. CESTARO**, is the owner of real property located at 280 Boston Post Road in Old Saybrook, Connecticut, which is within 100 feet of the Project is statutorily aggrieved.
2. The plaintiff, **STRATEGIC ACQUISITIONS-GM, LLC**, is the owner of real property located at 210 Boston Post in Old Saybrook, Connecticut, which houses a leaning center for children from ages 6 weeks old to 5 years old and is approximately two hundred fifty (250) feet of the Project and is therefore classically aggrieved.
3. The defendant, **FFDN EJV, LLC ("FFDN")**, is the applicant to the Town of Old Saybrook Zoning Commission seeking special exception approval for a cannabis dispensary facility (adult use) at 233 Boston Post Road in Old Saybrook, Connecticut.
4. The defendant, **BANTRY BAY VENTURES, LLC** is the applicant to the Town of Old Saybrook Zoning Commission seeking special exception approval for a cannabis dispensary facility (adult use) at 233 Boston Post Road in Old Saybrook, Connecticut and, upon information and belief, is the contract purchaser of the real property at 233 Boston Post Road in Old Saybrook, Connecticut.

5. The defendant, **TOWN OF OLD SAYBROOK ZONING COMMISSION** (“**Zoning Commission**”), is the agency empowered under the Connecticut General Statutes and the Zoning Regulations of the Town of Old Saybrook to authorize special exceptions and site plan approvals pursuant to the Town of Old Saybrook Zoning Regulations.
6. In accordance with the authority granted by Conn. Gen. Stat. §8-2, the Zoning Commission has adopted zoning regulations that could allow a cannabis dispensary facility (adult use) in the Town of Old Saybrook.
3. Zoning Regulation §34.2.16 could allow a special exception for “[e]xpansion or enlargement of a *cannabis dispensary facility* or change of *use* from *cannabis dispensary facility (medical)* to *cannabis dispensary facility (adult-use)* on properties which have obtained Site Plan Review approval prior to January 1, 2022.” (Emphasis in original.)
8. Additionally, Zoning Regulation §53.1 states in pertinent part:

Cannabis Dispensary (previously approved). An existing, or proposed, adult-use and/or medical *cannabis dispensary facility* may be expanded, enlarged or changed by Special Exception Permit subject to the following standards:

 - A. The existing, or previously approved adult-use and/or medical *cannabis dispensary facility*

obtained an approved Site Plan Application and/or approved Certificate of Zoning Compliance (CZC) prior to January 1, 2022.

- B. The *lot size* has not increased or decreased in size since the original Site Plan Application and/or approved Certificate of Zoning Compliance (CZC) prior to January 1, 2022.
- C. Use changes will be limited to types of retail *uses* only (medical and/or adult sales).
- D. The addition of *Cannabis Manufacturing/Growing* is not proposed.

(Emphasis in original.)

- 9. The plaintiffs' properties and the property at 233 Boston Post Road are within the Gateway Business B-4 District of the Town of Old Saybrook.
- 10. Zoning Regulation §34.0 states the purpose of the Gateway Business B-4 District is:

To allow for development of regional businesses that requires easy access to major highways. Applicable standards require building and site layout appropriate to the gateways to the Town of Old Saybrook. **These regulations pay particular attention to ensure that traffic congestion caused by these developments will not degrade or impede access to the Town itself.**
(Emphasis added.)

11. In June 2022, the defendants FFDN and Bantry Bay applied for a special exception permit to allow the retail sale of cannabis at 233 Boston Post Road in the Town of Old Saybrook.
12. The defendants FFDN and Bantry Bay asserted that in August 2018 the Zoning Commission had given site plan approval for the use of 233 Boston Post Road in the Town of Old Saybrook for a 2,600 square foot medical marijuana dispensary.
13. A medical marijuana dispensary never operated at 233 Boston Post Road in the Town of Old Saybrook.
14. The Zoning Commission held public hearings on the defendants' June 2022 application on August 1, 2022, September 7, 2022 and October 3, 2022.
15. Thereafter, on October 17, 2022, the Zoning Commission denied the aforesaid application for a special exception permit by a vote of 2 in favor and 3 opposed with no abstentions.
16. Thereafter, on November 28, 2022, the defendants FFDN and Bantry Bay appealed the Zoning Commission's decision to the Superior Court for the Judicial District of Middlesex at Middletown where the appeal was assigned Docket No. MMX-CV-22-6036014.

17. Despite filing this appeal to Superior Court, the defendants FFDN and Bantry Bay filed a revised application for special exception permit on or about December 14, 2022 with the Zoning Commission.
18. The Zoning Commission then held hearings on the revised application on January 18, 2023 and February 6, 2023.
19. On February 6, 2023, the Zoning Commission voted to approve the revised application, with conditions, by a vote of 3 in favor and 2 opposed with no abstentions.
20. Notice of the approval was published in the Hartford Courant on February 9, 2023.
21. In approving the defendant FFDN and BANTRY BAY's special exception application, as aforesaid, the Zoning Commission acted illegally, arbitrarily, unreasonably and in abuse of discretion in that:
 - a. Of the 5 Zoning Commission members who voted on the application at the Zoning Commission's February 6, 2023 meeting, 3 were absent from the January 18, 2023 Zoning Commission hearing in which evidence was presented and presentations were made both "for" and "against" the application. At the beginning of the February 6, 2023

continued hearing, Zoning Commission Chairman Friedmann stated, on the record, that he had listened to the recording of the January 18, 2023 hearing and was prepared for the hearing and knowledgeable as to the application. The other members attending on February 6, 2023 – but who had been absent on January 18, 2023 – made no statement that they had listened to any audio recordings or reviewed any materials presented in their absence.

- b. None of the voting members who voted to deny the initial application changed their votes on February 6, 2023.
- c. None of the voting members who voted to approve the initial application changed their votes on February 6, 2023.
- d. The different vote tally occurred because Zoning Commission member Lewis (who voted to deny the initial application) was absent on February 6, 2023 and was replaced by alternate Zoning Commission member Terribile (who voted to approve the revised application).
- e. In denying the initial application on October 17, 2022, reasons for the denial were read into the record of the meeting after the votes had been taken. In approving the revised application on February 6, 2023, no

Zoning Commission member stated any reasons for this decision beyond the text of the motion and, as a result, the Court's review in this appeal is not limited.

- f. In considering an application for a special exception, Zoning Regulation §52.6.3 mandates that "provision will be made for vehicular access to the *lot* in such a manner as to avoid undue hazards to traffic or pedestrians and undue traffic congestion on any *street*." (Emphasis in original.) Despite this mandate, the Zoning Commission:
 1. did not condition approval upon improvement of a "Y" intersection at the subject lot's boundary with Boston Post Road and Springbrook Road into a "T" intersection despite such repeated recommendations from the Town's traffic engineer, Hardesty & Hanover, LLC and the applicant's own submission of plans consistent with such an improvement;
 2. ignored the protests of nearby business owners and residents who testified that the increased traffic brought by the cannabis

dispensary should not be allowed at this site due to the present street configurations;

3. ignored the repeated pleas of the town's police chief, Michael Spera, that it would be negligent to allow a business with a large customer base and high customer turnover to operate at 233 Boston Post Road as it would be inappropriate for the site and tremendously unsafe.
4. ignored the testimony of the town's police chief, Michael Spera, and others, that 233 Boston Post Road lacked sufficient access for the anticipated vehicular traffic due to the deficiencies of the "Y" intersection at Boston Post Road and Springbrook Road;
5. ignored the testimony of the town's police chief, Michael Spera, and others, that the 233 Boston Post Road lot lacked sufficient turnaround space due to its "L" shaped configuration; and
6. ignored the testimony of the town's police chief, Michael Spera, and others, that 233 Boston Post Road was not conducive for the anticipated increased vehicular or pedestrian traffic due to the lack of:

- i. sidewalks;
- ii. crosswalks; and
- iii. traffic control signals.

7. created an unenforceable condition to install sidewalks along the frontage of the property on both Boston Post Road and Springbrook Road by stating, “[i]f installation of sidewalks is not permitted by the Connecticut Department of Transportation, this condition shall be deemed void.”

- g. Ignored the negative referral from the town’s Economic Development Commission.
- h. Ignored the testimony and evidence of nearby business owners that, due to the aforesaid lot and street restrictions, their businesses would become “turn around” spots for the increased traffic and insufficient parking associated with the anticipated use.
- i. Although Chief Spera confirmed that private traffic control workers would have no authority to step onto Boston Post Road to attempt to control traffic, the applicant produced evidence from LAZ Parking that

the applicant had retained LAZ Parking “to manage both parking and traffic”.

- j. Ignored testimony and evidence that 233 Boston Post Road is within 250 feet of a pre-existing and long standing (16 years in operation) children’s learning center for children aged 6 weeks to 5 years old and is, therefore, an inappropriate use at this particular location.

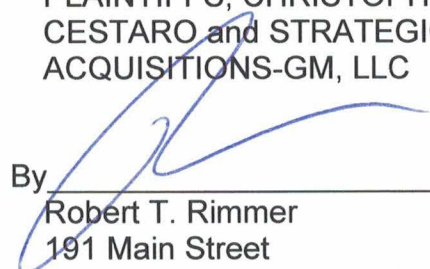
- 22. In making its decision, the Zoning Commission acted upon an incomplete application and rather than requiring a complete application, instead granted the special exception permit and made the filing of completed materials a condition of the approved special permit.
- 23. The plaintiffs are aggrieved 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 Gateway Business B-4 District;
 - c. decided the special exception application upon factors not contained in the Zoning Regulations;
 - d. failed to require compliance with the Zoning regulations;

- e. failed to require compliance with the Retail Cannabis regulations;
- f. improperly interpreted the Zoning Regulations;
- g. improperly interpreted the Gateway Business B-4 District Regulations;
- h rendered a decision that was not supported by the record;
- i. the Zoning Commission's special exception approval was clearly erroneous; and
- j. the Zoning Commission's approval of the special exception 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 Town of Old Saybrook Zoning Commission be declared to be null and void;
2. Judgment reversing the February 6, 2023 decision of the Town of Old Saybrook Zoning Commission or, in the alternative, remanding the matter to the Town of Old Saybrook Zoning Commission with instructions to deny the requested special exception;
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, CHRISTOPHER P.
CESTARO and STRATEGIC
ACQUISITIONS-GM, LLC

By 

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