

DOCKET # CV19-6085147 S

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SUPERIOR COURT

SUPERIOR COURT

BROOKSIDE PACKAGE, LLC, ET. AL.

2020 OCT -5 PM 3: 39

J.D. OF FAIRFIELD

V.

JUDICIAL DISTRICT OF
FAIRFIELD AT BRIDGEPORT
STATE OF CONNECTICUT

AT BRIDGEPORT

CITY OF BRIDGEPORT PLANNING & ZONING COMMISSION

OCTOBER 5, 2020

MEMORANDUM OF DECISION

FACTS AND BACKGROUND

This appeal represents the culmination of a six (6) year campaign aimed at permanently locating a package store in a portion of a one story structure located at 1044 Brooklawn Avenue, Bridgeport.

The Intervening Defendant, Vitros, LLC, and its principal, Michael DeFillipo, have persisted in an attempt to dedicate a 1,880 square foot portion of 1044 Brooklawn Avenue for use as a package store. The pursuit of that goal, ignited a debate and public controversy involving land use planning, public policy, economic development, and Bridgeport’s political culture.

Because this appeal is not being decided in a vacuum, the history of this protracted odyssey will be set forth, in order to establish context, and preserve an historical record for the City of Bridgeport.

In the fall of 2014, a liquor permit application was filed with the State of Connecticut. The application sought permission to locate a package store at 1044 Brooklawn Avenue. Since a package store, consistent with the Bridgeport Zoning Regulations, is considered a retail sales use, and is a permitted use in an Office Retail (O-R) Zone, no special permit was required before opening a store in the 1044 Brooklawn Avenue location. (Table 2A, Bridgeport Zoning Regulations)

While the application was being processed by the state of Connecticut, Michael DeFillipo applied to the Bridgeport Zoning Department for a certificate of zoning compliance. In 2014, Section 12-10a of the Bridgeport Zoning Regulations read:

“Package Store: No use for which a package store permit is required under Chapter 545, Section 30-1 through 30-115 of the Connecticut General Statutes, may be located so that an entrance to such use is within a 1,500-foot radius of a Lot containing a house of worship, school, hospital, commercial day care center, or any other use requiring an all-alcohol liquor package store permit... “

On October 2, 2014, Bridgeport Zoning Enforcement Official Dennis Buckley issued the zoning “sign off” on the liquor permit application, and a certificate of zoning compliance. Based on Buckley’s “sign off”, the state of Connecticut Department of Liquor Control Licensing Division approved the package store application.

In December of 2014, the owner of a competing liquor store, located on Brooklawn Avenue in Fairfield, learned of the package store at 1044 Brooklawn Avenue, Bridgeport. He appealed Buckley’s October 2, 2014 certificate of zoning compliance, claiming that two (2) houses of worship, Congregation B’Nai Israel and St. Margaret’s Shrine, were within 1,500 feet of 1044 Brooklawn Avenue, in violation of Section 12-10a of the Regulations. It was later learned, that Congregation Rodeph Shalom and Lil Blessings Day Care Center were also within a 1,500 foot radius of 1044 Brooklawn Avenue.

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Having been notified that he had issued a zoning "sign off" in violation of Section 12-10a of the Regulations, Buckley rectified the error. On December 12, 2014, he rescinded his over the counter approval of the certificate of zoning compliance.

Upon receipt of Buckley's rescission, DeFillipo applied to the Bridgeport Zoning Board of Appeals for a variance of Section 12-10a of the Regulations. In support of the application, he claimed, as a hardship, that "there are no other liquor establishments in Bridgeport within a 1,500 foot radius."

At the April 14, 2015 public hearing before the Bridgeport Zoning Board of Appeals, letters and testimonials were received from various public officials and Democratic Party leaders, including Democratic Party Chairman Mario Testa, former mayor John Fabrizio, Council President Thomas McCarthy, and City Council members Michelle Lyons, Amy Marie Vizzo-Paniccia and Howard Austin. All lauded Michael DeFillipo and his family, while urging support for the granting of the requested variance.

The Zoning Board of appeals voted, 4-1, to approve the variance, and an appeal to court followed. While the appeal was pending, the package store was opened for business, based upon the favorable action of the Bridgeport Zoning Board of Appeals.

On December 30, 2015, the appeal was sustained, and Michael DeFillipo was ordered to cease and desist from the use of any portion of 1044 Brooklawn Avenue as a package store. Brooklawn Discount Liquors, LLC, Et. Al v. Zoning Board of Appeals, City of Bridgeport (2015 WL9920785; J. D. of Fairfield, at Bridgeport; Docket # CV-15-6049833 S)

The package store was closed in January of 2016.

However, the sustaining of the appeal did not end the effort to locate a package store at 1044 Brooklawn Avenue. Bridgeport city resources and personnel were deployed in support of Michael DeFillipo's goal, as the battle shifted to the Bridgeport Planning and Zoning Commission, and a campaign to amend Section 12-10a of the Bridgeport Zoning Regulations.

Bridgeport's Office of Planning and Development (OPED), acting through city employee Lynn Haig, submitted an application to the Planning and Zoning Commission on August 25, 2017. The formal application, signed by Lynn Haig, followed months of research and investigation by OPED personnel, concerning municipal zoning regulations applicable to the sale of liquor. OPED personnel compiled and analyzed data, and contrasted the Bridgeport Regulation, with those in other Connecticut towns and cities.

OPED's proposal sought to reduce the 1,500 foot mandatory distance between a package store and a house of worship, a school, a hospital, or a commercial day care center to 750 feet. The required separation was:

"within a 750 foot radius of a lot owned by or containing a house of worship, school or hospital, or a lot containing a commercial day care center."

The number of package stores permitted within a given Connecticut municipality is governed by state statute. One establishment is permitted for every 2,500 residents. When OPED's proposal was submitted to the Planning and Zoning Commission in 2017, forty-two (42) package stores were operating in Bridgeport. A maximum of fifty-seven (57) were permitted consistent with the applicable formula.

The public hearing process concerning OPED's proposed Text Amendment began on September 25, 2017. Lynn Haig addressed the Commission in support of the proposal, which sought to overhaul the procedure to be followed when a package store was proposed anywhere within the City of Bridgeport. The proposal, in addition to reducing by one-half the distance between a package store and particular sensitive uses of property, also established a "Certificate of Location" requirement.

Three (3) speakers addressed the Commission in support of the Text Amendment—Lynn Haig, a resident who announced he was "semi in favor" of the Amendment, and Attorney Charles Willinger, counsel for Michael DeFillipo, the owner of 1044 Brooklawn Avenue.

Attorney Willinger suggested what he termed a "technical clean up" of the proposal. He conceded that the main entrance to 1044 Brooklawn Avenue was 738 feet from the lot line of St Margaret's Shrine, and, therefore, did not meet the proposed 750 foot standard advocated by Lynn Haig.

Therefore, in order for his client to comply with the new 750 foot requirement, he proposed that the distance be measured from the entrance of the liquor establishment, to the entrance of the building containing a house of worship, school, hospital or commercial day care center. The distance between the entrance to 1044 Brooklawn Avenue and the entrance to St. Margaret's Shrine is 900 feet.

The public hearing resumed on October 30, 2017. During the second night of hearings, many residents and public officials spoke in opposition to OPED's proposed changes in the Regulation. Opponents included Superintendent of Schools Aresta Johnson, members of the Bridgeport Board of Education, a real estate planning and development specialist, and Bridgeport's Neighborhood Revitalization Zone (NRZ) leadership committee.

After the public hearing was closed to additional opposition speakers, Lynn Haig requested a continuance, before offering any rebuttal. Her request was granted, as was a second continuance request on January 29, 2018. Regarding the second extension, Haig stated that additional resources, outside OPED's staff, including "outside counsel" might be needed in order to review the proposal. A final continuance was granted on February 26, 2018.

On March 26, when the public hearing process finally resumed, Lynn Haig did not come prepared to offer rebuttal testimony. Instead, presumably on the basis of additional input and advice received after the public hearing had been closed to opposition speakers and evidence, she unveiled a "modification" of OPED's initial proposal.

The modification Amendment retained the reduction from 1,500 feet to 750 feet from certain sensitive uses. However, the revision computed the 750 foot standard from the entrance of the liquor outlet, to the entrance of a building containing a house of worship, school, hospital or commercial day care center, rather than from the property boundary or lot line.

This change was originally suggested as a "technical clean up" by counsel for Michael DeFillipo, on the first night of the public hearing, September 25, 2017.

Because the new OPED submission diverged from the initial proposal, opposition to the "modification" was entertained on April 30, 2018. Five (5) members of the Bridgeport City Council testified in opposition to the modified proposal. Counsel for the Bridgeport Package Store Association

opposed use of the "entrance to entrance" criteria, claiming that it constituted a significant change in the proposed regulation.

Counsel also questioned whether Lynn Haig, and/or OPED, had standing to propose changes to the Bridgeport Zoning Regulations, consistent with Section 14-9-1 of the Regulations. That section reads:

"These regulations, and/or the Zoning Map may be amended from time to time by the Planning and Zoning Commission on its own initiative or by a private application made by any person having a legal property interest, including, but not limited to, owners, lessees, and holders of development rights, in property located within the city..."

Lynn Haig is not the owner of any real property in the City of Bridgeport, and OPED, a city agency, does not hold title to real property,

Prior to adopting OPED's modified proposal on July 30, 2018, the Planning and Zoning Commission changed the authority charged with issuing a certificate of location from the Bridgeport Zoning Board of Appeals, to the Bridgeport Planning and Zoning Commission.

The adopted certificate of location Regulation required the applicant to submit a site plan, and a Class A-2 survey showing all sensitive uses within 750 feet of the proposed liquor outlet. Before any certificate of location could be issued, the Commission was required to make six (6) specific findings:

1. The use is compatible with and implements the policies of Bridgeport's Master Plan of Conservation and Development;
2. The use will not impair the future development of the surrounding area;
3. The proposal includes adequate safeguards to protect adjacent property and the neighborhood in general, from any detrimental impacts the proposed use might otherwise have;
4. In the case of a proposed use located in, or directly adjacent to a residential district, the location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, the site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith, will not be incongruous with residential uses, and will not present any undue hazard or inconvenience to the residents;
5. The proposed use will not adversely impact property values and the character and extent of development of adjacent properties; and
6. The use will not be disruptive to or cause conflicts with existing uses within the immediate vicinity.

A timely appeal of the July 30, 2018 action by the Commission was instituted. However, this appeal became "moot", when the Planning and Zoning Commission adopted a nearly identical text amendment on February 25, 2019.

The 2019 Amendment, unlike that adopted on July 30, 2018, was submitted by the Planning and Zoning Commission on its own initiative. Approval of this Amendment cured any failure to satisfy the requirements of Section 14-9-1 of the Bridgeport Zoning Regulations.

Six (6) members of the Commission (Morton, Cordero, Fedele, Gravina, Walker and Riley) voted in favor of the Amendment, while two (2) commissioners (Filotei and Moreno) were opposed.

A timely appeal of the February 25 approval was filed.

That appeal was ultimately dismissed, with the exception of a single issue. The City of Bridgeport, at trial, had argued that the right to a public hearing was implicit in the Regulation, even though the certificate of location process did not explicitly provide for a hearing. Furthermore, the Commission had, as a matter of policy, required public hearings on all certificate of location applications, while the February 25, 2019 action was pending.

Therefore, the matter was remanded to the commission for the express purpose of explicitly providing, within the body of the Regulation, for the public hearing process which the City maintained was an implicit provision of the adopted Regulation.

The Zoning Regulations were amended on January 27, 2020, to specifically require a public hearing, prior to the issuance of a certificate of location.

THE INTERVENING DEFENDANT, VITROS, LLC'S, APPLICATION FOR A CERTIFICATE OF LOCATION

While the appeal of the Commission's action was pending, Vitros, LLC applied for a certificate of location for the proposed package store at 1044 Brooklawn Avenue, Bridgeport.

On March 25, the Planning and Zoning Commission conducted a public hearing concerning the requested certificate of location (ROR 23).

On the date of the certificate of location application, Section 10-12b (1) of the Bridgeport Zoning Regulations provided: (ROR 17)

"1. No use for which a package store or grocery beer permit is required under Chapter 545 of the Connecticut General Statutes, as amended, may be located so that the entrance to such use is within a 750 foot radius of the entrance of a building located in the City of Bridgeport containing a house of worship, school or hospital, or a building containing a commercial day care center..."

Counsel for the applicant, Vitros, LLC, explained that 1044 Brooklawn Avenue is a four (4) unit retail shopping center, which was built in 1957 as a neighborhood shopping center. The building, which is known as Three Corners Plaza, is owned by Michael DeFillipo, and consists of 4,459 square feet (ROR 23, p. 3).

Along with the petition for a certificate of location (ROR 1), the applicant submitted a site plan, and a survey (ROR 5; ROR 6), showing the portion of the property, 1,490 square feet, which would be used as a package store, and the distance from the entrance to the package store to all uses listed in Section 12-10b of the Regulations.

The Class A-2 survey which accompanied the application, demonstrated that St. Margaret's Shrine, a house of worship, is 772 feet from the front entrance to the package store (ROR 23, p. 4-5). The surrounding area is fully developed, and use as a package store is a permitted use in the Office Retail (O-R) Zone. (ROR 23, p. 7-10) Counsel reviewed the six (6) findings which the Commission is

required to make pursuant to Section 12-10a of the Regulations, and argued that the application satisfied the criteria (ROR 23, p. 13).

Opponents (Supplemental ROR), potential competitors as owners of area package stores, objected to the granting of the certificate of location. They claimed that the application failed to satisfy the six (6) factual findings required by Section 12-10a of the Regulations, and that the use of the word "entrance" in the Regulation was ambiguous.

They maintained that a rear door, used only for deliveries and not open to the public, was 729 feet from St. Margaret's Shrine, and did not satisfy the 750 foot minimum standard (Supplemental ROR).

Following the public hearing, the Planning and Zoning Commission voted, unanimously, to approve the requested certificate of location for 1044 Brooklawn Avenue, subject to two (2) conditions:

1. The site improvements and development of the subject site be in accord with the plan submitted and approved by the Commission.
2. The petitioner shall file plans and applications for a certificate of zoning compliance for a tenant-fit-up and a Building Permit.

In its March 29, 2019 decision letter (ROR 21), the Commission provided two (2) reasons for its action:

1. The plan as approved complies with all six (6) regulation requirements for an Approval of Location.
2. The project complies with the Plan of conservation and Development.

Notice of the Commission's decision was published in the Connecticut Post (ROR 13) on March 31, 2019, and this timely appeal followed.

AGGRIEVEMENT

This appeal is brought by twelve (12) individuals and entities, all of whom operate liquor stores in the City of Bridgeport.

In a stipulation dated August 3, 2020, all parties agree that the twelve (12) Plaintiffs either own or are tenants of real property in the City of Bridgeport. Each of the Plaintiffs pays real or personal property taxes to the City of Bridgeport.

The twelve (12) Plaintiffs are: 1) Brookside Package, LLC, d/b/a Brookside Discount Wine and Liquors, 2) SSUN, LLC, d/b/a Price Break Liquor, 3) Omsai, LLC, d/b/a Grand Package Store, 4) Main Wine and Liquor, LLC, d/b/a Main Wine and Liquor, 5) Borges Family Liquors, LLC, d/b/a Conte's Package Store, 6) Caesars Package Store, LLC, d/b/a Caesars Package Store, 7) Sai Liquor Malt, LLC, d/b/a Justice Liquor Store, 8) Shree Maruti, LLC, d/b/a East End Package Store, 9) G. Bath, LLC, d/b/a Campus Package Store, 10) Teen Murti, LLC, d.b.a Absorb Discount Liquor, 11) 1818 Barnum Package Store, LLC, d/b/a King Discount Liquor, and 12) Jaydev, LLC, d/b/a Black Rock Liquor Store.

All claim to be aggrieved by the decision of the Bridgeport Planning and Zoning Commission to approve the certificate of location requested by the Intervening Defendant, Vitros, LLC.

Aggrievement falls into two (2) basic categories – statutory aggrievement, and classical aggrievement.

Statutory aggrievement exists by virtue of legislative fiat, rather than through an analysis of the facts of a particular case. Moutinho v. Planning & Zoning Commission, 278 Conn. 660, 665 (2006). One claiming statutory aggrievement must show that a particular statute grants standing to appeal, without the necessity of demonstrating actual injury based on the particular facts at hand. Pond View, LLC v. Planning & Zoning Commission, 288 Conn. 143, 156 (2005).

Section 8-8 (1) of the General Statutes defines “aggrieved person” to mean:

“... any person owning land in this state that abuts or is within a radius of one hundred feet of the land involved in the decision of the board...”

Classical aggrievement, on the other hand, requires a party claiming to be aggrieved to satisfy a well-established two-fold test: 1) the party must show a specific personal and legal interest in the decision appealed from, as distinct from a general interest, such as concern of all members of the community as a whole, and 2) the party claiming to be aggrieved must prove that the personal and legal interest has been specifically and injuriously affected by the decision appealed from. Cannavo Enterprises v. Burns, 194 Conn. 43, 47 (1984); Hall v. Planning Commission, 181 Conn. 442, 444 (1980). The threat of business competition as a consequence of a zoning action is not sufficient to establish classical aggrievement. Farr v. Zoning Board of Appeals, 139 Conn. 280, 289 (1953); Benson v. Zoning Board of Appeals, 129 Conn. 280, 284 (1942); Fuller, Robert A., “Land Use Law and Practice”, (4th ed. 2015), S. 32.5, p. 193.

Because none of the Plaintiffs claim to have satisfied the test for either statutory or classical aggrievement, their only basis for claiming aggrievement is the “automatic standing” rule. That rule holds that a municipal taxpayer appealing a decision by a zoning authority which involves the sale of alcoholic beverages, is a priori an aggrieved person for purposes of an appeal. Alliance Energy Corp. v. Planning & Zoning Board, 262 Conn. 393, 403 (2003); Jolly, Inc. v. Zoning Board of Appeals, 237 Conn. 184, 186-87 (1996); M & R Enterprises, Inc. v. Zoning Board of Appeals, 155 Conn. 280, 281-82 (1967); Zuckerman v. Board of Zoning Appeals, 144 Conn. 160, 164 (1956); O’Connor v. Board of Zoning Appeals, 140 Conn. 65, 71-72 (1953); Beard’s Appeal, 64 Conn. 526, 534 (1894).

Since Beard’s Appeal, supra, in 1894, our courts have recognized that in liquor traffic there is a possible source of danger to the public which is not inherent in other businesses, and which justifies special treatment. Alliance Energy Corp. v. Planning & Zoning Board, supra, 401. There is no distinction for purposes of aggrievement between the payment of personal property taxes and real property taxes, in a situation involving the “automatic standing” rule. Jolly, Inc. v. Zoning Board of Appeals, supra, 193-94.

It is found that all Plaintiffs are aggrieved for purposes of this appeal.

STANDARD OF REVIEW

Bridgeport’s certificate of location is not a special permit or special exception. However, like a special permit, the certificate of location allows a property owner to use his property in a manner which

is expressly permitted by the zoning regulations. A.P.&W. Holding Corporation v. Planning & Zoning Commission, 167 Conn. 92, 85 (1984).

1044 Brooklawn Avenue is located in a zone (O-R) in which package stores are a permitted use. In the absence of a certificate of location requirement, package stores are not subject to the special permit procedure if proposed in an Office Retail (O-R) Zone. However, given the certificate of location mandate, and the general health, safety and welfare standards set forth in Section 12-10 of the Zoning Regulations, the certificate of location fulfills the role normally assigned to a special permit. Therefore, the role of the Planning and Zoning Commission is administrative, rather than legislative or quasi-judicial. Irwin v. Planning & Zoning Commission, 244 Conn. 619, 627 (1998). Its role is to determine whether the certificate of location application, as presented, satisfies the standards contained in the regulations. Quality Sand & Gravel, Inc. v. Planning & Zoning Commission, 55 Conn. App. 533, 537 (1999).

As it does when evaluating a special permit application, a planning and zoning commission confronted by a certificate of location request, has a right to interpret its regulations, and to determine whether general standards regarding health, safety, welfare and property values have been satisfied. Whisper Wind Development Corp. v. Planning & Zoning Commission, 229 Conn. 176, 177 (1994); St. Joseph's High School, Inc. v. Planning & Zoning Commission, 176 Conn. App. 570, 579 (2017).

The commission's actions are subject to review by a court, only to determine whether the challenged action was unreasonable, arbitrary or illegal. Schwartz v. Planning & Zoning Commission, 208 Conn. 146, 152 (1988). In exercising its discretion, a commission engages in a fact specific analysis. A reviewing court cannot substitute its judgement for that of the commission, on factual questions. Timber Trails Corp. v. Planning & Zoning Commission, 222 Conn. 380, 401 (1992).

Conclusions reached by the commission must be upheld, if supported by substantial evidence in the record. The substantial evidence standard is highly deferential, and permits less judicial scrutiny than a "clearly erroneous" or "weight of the evidence" standard. Sams v. Department of Environmental Protection, 308 Conn. 359, 374 (2013).

COMMISSION PROPERLY INTERPRETED 'ENTRANCE TO ENTRANCE' STANDARD IN SECTION 12-10 (1) OF THE CERTIFICATE OF LOCATION REGULATION

The Plaintiffs maintain that Section 12-10b (1) of the Bridgeport Zoning Regulations is ambiguous. Specifically, they point to the phrase "the entrance" in the Regulation, and insist that an establishment is capable of having one or more points of ingress and egress.

It is claimed that the phrase "the entrance" is ambiguous, based upon a review of the record, because the public entrance to the package store, which faces Brooklawn Avenue and the parking area, is not the only entrance to the unit. A rear entrance, used only for deliveries, also provides access to the package store area, and that entrance is less than 750 feet from the entrance to St. Margaret's Shrine.

Vitros, LLC also argues that the "entrance to entrance" standard was upheld in Brookside Package, LLC, Et. Al. v. Planning & Zoning Commission (2020 WL586994; J.D. of Fairfield, at Bridgeport; Docket # CV-19-6084928 S), and was not found to be ambiguous or arbitrary. The Intervening Defendant therefore claims that principles of collateral estoppel preclude re-litigation of the issue in this appeal.

The Bridgeport Planning and Zoning Commission, in a pleading dated June 25, 2020, adopted the arguments presented in the brief filed by Vitros, LLC on April 14, 2020. The City of Bridgeport declined to advance any argument in addition to those presented by Vitros, LLC, concerning the issuance of the Certificate of Location, or the language of its Zoning Regulation.

For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in a prior action. The issue must have been actually decided, and the decision must have been necessary to the judgement which was entered. Virgo v. Lyons, 209 Conn. 497, 501 (1988).

In order for collateral estoppel to apply, there must have been an identity of issues between the prior proceeding, and the subsequent proceeding. The issue sought to be litigated in the new proceeding must be identical to that considered in the prior proceeding. Collateral estoppel cannot be applied, in the absence of an identical issue. Gladysz v. Planning & Zoning Commission, 253 Conn. 249, 261 (2001); Terracino v. Buzzi, 121 Conn. App. 846, 853 (2010).

Whether collateral estoppel applies is a question of law for the court, and the review is plenary. R & R Pool v. Zoning Board of Appeals, 257 Conn. 456, 466 (2001).

In Brookside Package, LLC, Et. Al. v. Planning & Zoning Commission, supra, this court was called upon to determine the validity of a Regulation adopted by the Commission, which employed an "entrance to entrance" standard, rather than the "lot line to lot line" approach when measuring the distance between a package store, and various sensitive uses. The "entrance to entrance" standard represented a change from the existing Regulation.

The court determined that the Bridgeport Planning and Zoning Commission, acting in a legislative capacity, was permitted to adopt a new standard of measurement.

In Brookside Package, LLC, Et. Al. v. Planning & Zoning Commission, supra, the court was not called upon to review a site specific certificate of location proposal, and to determine whether the Commission, acting administratively, properly applied its own regulation. The issues in the two appeals were not identical, and, therefore, the Plaintiffs may properly raise the appropriate construction of the phrase "the entrance" in this appeal, which concerns the 1044 Brooklawn Avenue location.

The Commission, in approving the Certificate of Location application filed on behalf of the Intervening Defendant, measured the 750 foot distance between the package store at 1044 Brooklawn Avenue, from the main entrance which faces Brooklawn Avenue, to the main entrance of St. Margaret's Shrine. That distance is 772 feet (ROR 23, p. 4-5), and complies with Section 12-10b (1) of the Regulations.

The Plaintiffs claim that the regulation is ambiguous, and that the "entrance" distance is not satisfied, if the delivery entrance in the rear of 1044 Brooklawn Avenue is used, or the "entrance" to the driveway is substituted for the "entrance" to the individual store.

The court agrees with the Intervening Defendant.

A municipal land use body, is in the most advantageous position to interpret its own regulations, and to apply those regulations to the application before it. New London v. Zoning Board of Appeals, 29 Conn. App. 402, 405 (1992). However, while the position of the municipal agency is entitled to some deference, the interpretation of a provision of a zoning ordinance is a question of law for the court, and

is therefore the subject of plenary review. Doyen v. Zoning Board of Appeals, 67 Conn. App. 597, 611 (2002).

Section 1-2z of the General Statutes, requires that a court first examine the text of the regulation in question. The statute reads:

“The meaning of a statute shall in the first instance, be ascertained from the text of the statute itself...”

A municipal zoning regulation is a legislative enactment, and must be governed by the same principles which apply to the construction of statutes. Campion v. Board of Aldermen, 278 Conn. 500, 510 (2006); Lawrence v. Zoning Board of Appeals, 159 Conn. 509, 511 (1969). The process of statutory interpretation involves a determination of the meaning of the language employed. A regulation must be interpreted in accordance with the principle that a reasonable and rational result was intended. Wood v. Zoning Board of Appeals, 258 Conn. 691, 699 (2001); Steroco v. Szymanski, 166 Conn. App. 75, 82 (2016).

A court, faced with two equally plausible interpretations of language, may properly give deference to the construction of language adopted by the agency. Trumbull Falls, LLC v. Planning & Zoning Commission, 97 Conn. App. 17, 23 (2006); Cunningham v. Planning & Zoning Commission, 90 Conn. App. 273, 279-80 (2005).

Section 12-10b (1) uses the phrase “the entrance’ when referring to both a package store, and the sensitive use. The use of the article “the” as opposed to either the article “a” or “an”, is significant.

As a definite article, the word “the” refers to a specific object, whereas the indefinite articles “a” or “an” refer to unlimited objects. Stephan v. Pennsylvania General Ins. Co., 224 Conn. 758, 764 (1993). In statutory construction, unlike “the” which particularizes the word it precedes, and is a word of limitation, the indefinite article “a” has an indefinite or generalized force, and “an” means any. Builders Service Corp. v. Planning & Zoning Commission, 208 Conn. 267, 282 (1988); Mallozzi v. National Mutual Ins. Co., 72 Conn. App. 620, 627-28 (2002).

By interpreting “the entrance” to mean the main entrance of the package store, the Bridgeport Planning and Zoning Commission provided a uniform standard to be applied, rather than one which would allow for a different result based upon building design. Furthermore, forcing a case by case examination for points on ingress and egress regarding a particular building could prove unworkable, and arbitrary.

Use of the driveway entrance to property for purposes of distance measurement, is equally problematic. Utilizing the entrance to a large shopping center, for example, as the “entrance” to a package store located within the shopping center, would yield absurd, and unintended results.

While the controlling regulation in this case is the Regulation as it existed at the time of the Intervening Defendant’s application, it should be noted that on January 27, 2020, Section 12-10b (1) was amended. The Amendment was clarifying in nature, and provides that the “entrance” to a package store is “the main entrance.” This subsequent clarification lends further support to the proposition that the Commission intended to use the main entrance to a package store as the appropriate starting point, when measuring compliance with Section 12-10b (1).

The burden of proving that a municipal land use body has acted improperly, is upon the party seeking to challenge a decision. Pleasant View Farm Development, Inc. v. Zoning Board of Appeals, 218 Conn. 265, 269-70 (1991). The Plaintiffs have failed to satisfy that burden, regarding the interpretation of the phrase "the entrance."

APPROVAL OF CERTIFICATE OF LOCATION SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD

Section 12-10 of the Zoning Regulations requires one applying for a certificate of location to submit a site plan and a Class A-2 survey, containing information specified in the Zoning Regulations. Vitros, LLC has complied with these requirements.

In addition, the Planning and Zoning Commission is required to make six (6) findings, as set forth in Section 12-10a. The Commission determined that all six (6) of the necessary findings should be made. That unanimous decision is supported by substantial evidence in the record.

The portion of 1044 Brooklawn Avenue which is proposed as a package store is located in a commercial building which is located in an Office Retail (O-R) Zone. The building also contains a barber shop, a launder mat, and a variety store, as part of the neighborhood retail shopping center. A package store is a permitted use, in the O-R Zone.

The Connecticut Supreme Court has stated that the designation of a particular use of property as a permitted use, establishes a conclusive presumption that such use does not adversely affect the district, and precludes further inquiry into the effect on traffic, municipal services, property values or the general harmony of the use with the district. Friedman v. Planning & Zoning Commission, 222 Conn. 262, 265-66 (1992); Beit Havurah v. Zoning Board of Appeals, 177 Conn. 440, 443 (1979).

Although this statement has been regarded as dicta, and should not be controlling in a situation where the sale, use or dispensing of alcoholic beverages is involved, the classification of property by a municipal planning and zoning commission is entitled to great weight.

1044 Brooklawn Avenue is situated in an area which is fully developed, with commercial enterprises on both the Bridgeport and Fairfield side of the street. A bar and grill is located across the street in Fairfield, and another strip shopping center is directly south of the location in Bridgeport.

The record supports a finding by the commission that use of the property as a package store will not impair the surrounding area, and nearby residential areas will not be impacted by the establishment. Several letters were submitted as part of the record. Although these letters were initially provided during the variance application before the Zoning Board of Appeals in 2014, the Commission was entitled to consider them, and give them appropriate weight.

Each of the necessary findings was supported by substantial evidence in the record, as was a finding, by the Commission, that the proposed use was consistent with Bridgeport's Plan of Conservation and Development. (ROR 23, p. 2010)

The Plaintiffs have failed to demonstrate that the granting of the Certificate of Location regarding 1044 Brooklawn Avenue was arbitrary, capricious, or in abuse of the discretion vested in the Commission.

The Commission's unanimous decision should not be disturbed.

ISSUES NOT DECIDED

During this protracted six (6) year process, in which the location of a package store at 1044 Brooklawn Avenue was pursued, many issues and concerns were raised which are beyond the power of a court to address.

Questions were raised concerning the role played by Bridgeport's Office of Planning and Economic Development (OPED), and the relationship between additional liquor outlets, and meaningful economic development in Bridgeport. OPED's willingness to advocate for changes in its initial proposal, in a manner which accommodated the objective of locating a package store at 1044 Brooklawn Avenue, was also questioned, as was the willingness of the Planning and Zoning Commission to embrace those changes.

All this occurred, following the issuance and revocation of a certificate of zoning compliance by the City of Bridgeport, and the willingness of a super majority of Bridgeport's Zoning Board of Appeals to approve a variance, when the record was utterly devoid of evidence which would support a legally cognizable hardship.

However, despite the tortured route taken in pursuit of a package store at 1044 Brooklawn Avenue, the result is a process which is more transparent, and which will prevent abuse through over the counter approvals which are the antithesis of transparency. The fact that no package store can be located within the City of Bridgeport without a certificate of location, following an open, public hearing, is a victory for the public's right to know, and will help to ensure that concerns regarding public health, safety, welfare and property values are considered.

The proper role to be played by OPED in the future, and the actions of a Planning and Zoning Commission on which many members are serving expired terms, are matters properly addressed by elected officials in the City of Bridgeport.


In Brooklawn Discount Liquor, LLC v. Zoning Board of Appeals, supra, this court referenced the words famously uttered by John Adams, the second President of the United States, who declared that ours is 'a government of laws, and not of men.'

Just as the Bridgeport Zoning Board of Appeals, in Brooklawn Discount Liquor, LLC was not free to discard the rule of law based upon the identity and political support of the applicant, this court cannot usurp the legitimate prerogatives of the Bridgeport Planning and Zoning Commission, simply because that same applicant has applied for and obtained a certificate of location to which the rule of law entitles him consistent with the applicable Zoning Regulations.

At a time when, in the name of wokeness, many seek result oriented jurisprudence and justice, one can only hope that President Adams' vision will endure.

CONCLUSION

The appeal of the Plaintiffs, is DISMISSED

(Radcliffe, JTR) 
RADCLIFFE, JTR 1st Abst Clerk