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MEMORANDUM

TO: South Windsor Planning and Zoning Commission

FROM: James M. Connor, Esq.
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RE: Limitations On Planning and Zoning Commission Review of Site Plan Applications

DATE: March 8, 2022

Site plan review is governed by Section 8-3 of the Connecticut General Statutes. C.G.S. § 8-3 (g) provides in relevant part: “The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building, use or structure with specific provisions of such regulations. . . . A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations. Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d. . . . A decision to deny or modify a site plan shall set forth the reasons for such denial or modification. . . . The provisions of this subsection shall apply to all zoning commissions or other final zoning authority of each municipality whether or not such municipality has adopted the provisions of this chapter or the charter of such municipality or special act establishing zoning in the municipality contains similar provisions.”

In ruling upon a site plan application, [a planning and zoning] commission acts in its ministerial capacity, rather than in its quasi-judicial or legislative capacity. It is given no independent discretion beyond determining whether the plan complies with the applicable regulations The [commission] is under a mandate to apply the requirements of the regulations as written. If the plan submitted conforms to these regulations, the [commission] has no discretion or choice but to approve it Every property owner is entitled to rely on the local zoning regulations and to use his property accordingly.” (Citations omitted; internal quotation marks omitted.)

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Allied Plywood v. Planning and Zoning Com. of So. Windsor, 2 Conn. App. 506, 512, *cert. den.*, 194 Conn. 808 (1984).

Zoning regulations specify the uses permitted within each zoning district. “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 its effect on traffic, municipal services, property values, or the general harmony of the district.” (Internal quotation marks omitted.) Pansy Road, LLC v. Town Plan & Zoning Com. of Fairfield, 283 Conn. 369, 376 (2007) (in considering subdivision application that complies with all zoning regulations, commission cannot consider effect of subdivision on existing traffic congestion on town roads).

With respect to the impact of traffic emanating from a permitted use, “a land use agency cannot deny an application for a permitted use because of off-site traffic considerations.” Bethlehem Christian Fellowship, Inc. v. Planning & Zoning Com. of Bethlehem, 73 Conn. App. 442, 470 (2002), citing TLC Development, Inc. v. Planning & Zoning Com. of Branford, 215 Conn. 527, 532-33, (1990); Sowin Associates v. Planning & Zoning Com. of So. Windsor, 23 Conn. App. 370, 374, 375, *cert. den.*, 216 Conn. 832 (1990); Beit Havurah v. Zoning Bd. of Appeals of Norfolk, 418 A.2d 82, 177 Conn. 440, 443 (1979) (“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 its effect on traffic, municipal services, property values, or the general harmony of the district.”) It follows that a land use agency may not impose conditions of approval on a site plan intended to address off-site traffic considerations.

The court in Pansy Road, LLC reiterated and clarified prior holdings in Friedman v. Planning & Zoning Com. of Rocky Hill, 222 Conn. 262 (1992), and Sowin Associates, *supra*, stating that “traffic considerations can play only a limited role in the review of subdivision and site plan applications.” Pansy Road, LLC, *supra*, 283 Conn. at 379. The court explained that this limited role could include addressing traffic flow within the site and placement of entrances and exits from the site but could not provide a basis for denial of an application. *Id.*, 380.

The authority of the South Windsor Planning and Zoning Commission relating to traffic issues in its review of site plan applications is set forth in the South Windsor Zoning Regulations. Section 4.1.5 of the Regulations, entitled “Traffic Requirements” provides as follows:

4.1.5 Traffic Requirements To provide for the orderly flow of inbound and outbound site generated traffic, and to minimize the inherent conflicts between outbound left and inbound left maneuvers, applicants must demonstrate to the Commission’s satisfaction that the site generated traffic is able to enter and exit the site safely without disruption to the external traffic flow. On-site queuing provisions must be adequate to prevent site generated traffic from queuing on public streets. Sight lines for the existing traffic from the site drive must be satisfactory for the prevailing speed of approaching traffic. The applicant must demonstrate that the design provides for safe and orderly vehicular and

pedestrian flow and movement of traffic and minimizes vehicular and pedestrian conflicts. Delivery areas must be located so that normal operations are not impeded or compromised. An engineered traffic report must be provided with the application to demonstrate the adequacy of traffic flow and design.

South Windsor Zoning Regulations, Section 4.1.5. Similarly, Section 6.1.5 provides as follows:

6.1.5 Traffic and Circulation Considerations To assure the smooth flow of traffic to and from sites and to minimize conflicts between pedestrians and motor vehicles, Site Plan design should incorporate the following: 1. On-site queuing provisions must be adequate to prevent site-generated traffic from queuing onto public streets. 2. Sight lines for exiting traffic from the site drive must be satisfactory for the prevailing speed of approaching traffic. 3. The applicant must demonstrate that the design provides for safe and orderly vehicular and pedestrian flow and movement of traffic and minimizes vehicular and pedestrian conflicts. 4. Delivery areas must be located so that normal business operations are not impeded or compromised. A traffic report prepared by a professional engineer shall be provided with the application to demonstrate the adequacy of traffic flow and design. This report may be waived where the site-generated traffic is minimal and the Town Engineer concurs that the traffic layout is acceptable.

South Windsor Zoning Regulations, Section 6.1.5.

The authority of the South Windsor Planning and Zoning Commission is limited by these criteria. If a site plan application conforms to the regulations, the commission has no choice but to approve it. Pansy Road, LLC, *supra*, 283 Conn. at 374. The South Windsor Zoning Regulations do not give the Commission authority to regulate or restrict access to off-site streets by vehicles arriving at or departing from a permitted use in the zone or to require the owner of a permitted use to construct improvements to those off-site streets.

The property in the application is zoned I - Industrial, and warehouse and distribution center use is a permitted use in the zone. See South Windsor Zoning Regulations § Section 4.1.1 Permitted Uses. Because it is a permitted use, there is a conclusive presumption “that this proposed use does not adversely affect traffic within the zone, and the [Commission] therefore cannot deny the application because of existing off-site traffic congestion.” Pansy Road, LLC, *supra*, 283 Conn. at 379. As stated in Pansy Road, “the agency cannot turn down a site plan [or subdivision application] because of traffic problems on streets adjacent to the property.” R. Fuller, 9B CONNECTICUT PRACTICE SERIES: LAND USE LAW AND PRACTICE (3d Ed. 2007) § 49.14, p. 139.” Pansy Road, LLC, *supra*, 283 Conn. at 379-80.¹ The South Windsor Planning and Zoning Commission has no authority to regulate access to and from a permitted use.

¹ The quoted language is in the current edition of the cited treatise in R. Fuller, 9B CONNECTICUT PRACTICE SERIES: LAND USE LAW AND PRACTICE (4th Ed.) § 49.18.