



**ZANGARI COHN
CUTHBERTSON DUHL & GRELLO P.C.**

BRENTON J. ELLIOTT, ESQ. | DIRECT DIAL 203.786.3708 | BELLIOU@ZCCLAWFIRM.COM

December 8, 2025

Jeffrey Kennedy, Chairman
Town Plan and Zoning Commission
11 Meetinghouse Lane
Woodbridge, CT 06525

RE: 804 Fountain Street Special Exception Application

Dear Chairman Kennedy and Members of the Commission:

As you know, this office is legal counsel for the Woodbridge Land Trust (WLT) and the Woodbridge Park Association (WPA), Intervenors in the 804 Fountain Street Application to construct a 4-story, 96-unit apartment building under the Town of Woodbridge Opportunity Housing Regulations.

The Applicant's memorandum to the Commission dated December 1, 2025 recites legal principles but fails to apply them to the evidence before you. This is not an oversight. It is a deliberate strategy to obscure the fatal flaws in the application by hiding behind citations while avoiding any substantive analysis of the factual record. Reciting legal principles is what you learn in law school. Applying them to facts is what lawyers get paid to do. That is not how the law works. Legal standards must be applied to facts. What you have received is advocacy dressed up as legal guidance, designed to distract you from the central question: does this application meet the requirements for a Special Exception or not?

The answer, based on the unrefuted expert testimony in the record, is no.

The Applicant carefully avoids engaging with the specific, detailed expert evidence the Intervenors submitted. That evidence documents stormwater design failures, destruction of CTDEEP-designated Critical Habitats, adverse air quality impacts, and geological risks that threaten Bishop's Pond itself. Rather than address any of this, it simply asserts that our evidence "fails the substantial evidence test" without explaining how or why. That is not legal analysis. That is wishful thinking.

The Applicant's memorandum either misunderstands or deliberately mischaracterizes the Commission's role and discretion in Special Exception proceedings. This Commission is not a rubber stamp. It has broad authority under the Woodbridge Zoning Regulations section 6.3C to evaluate this application against multiple criteria. You also have explicit obligations under Connecticut General Statute § 22a-19(b) when environmental intervenors present evidence of



unreasonable harm. The Intervenors have presented exactly that kind of evidence through qualified experts who provided site-specific, factual testimony about actual environmental damage. The Applicant has not rebutted any of it because it cannot.

Credibility of Witnesses

The Commission has the authority to determine the credibility of witnesses and whether the application meets the regulations - not the applicant's attorney who is obviously biased. At the December 1 hearing, the Applicant through its counsel attempted to discredit and to damage the professional reputation of Steven Trinkaus, the professional engineer who testified on behalf of the Intervenors. Mr. Trinkaus has submitted his own detailed letter answering the Applicant's unfounded statements. In addition to those technical answers, we would remind the commission that the Applicant's counsel is an advocate, and by definition he is biased. He also is not a professional engineer.

Further, we ask you to consider why, at this late date, the Applicant has pivoted from rebutting Mr. Trinkaus on the merits of his testimony to attacking his credibility in a mean-spirited and disrespectful manner, accusing Trinkaus, a respected and award-winning professional, of having a "schtick." There is an old saying in legal circles that when you have the facts on your side argue the facts, when you have the law on your side argue the law, and when you have neither the facts nor the law, pound the table. The Applicant's attack on Mr. Trinkaus amounts to a "pound the table" approach. The attack hinges on a footnote in a recent legal case (*751 Weed St LLC v. Town of New Canaan Planning and Zoning Commission*), where a judge criticized Mr. Trinkaus for making similar arguments in several different cases. There is a simple and obvious explanation for such consistency: the stormwater systems Mr. Trinkaus was criticizing in those different cases have similar designs and thus have similar flaws. Furthermore, the cited Weed St. case was an 830-g application. 804 Fountain St, as you know, is a Special Exception application with a completely different standard of proof and a completely different level of discretion accorded to the commission. In the case before you, *the burden of proof is on the applicant* – the opposite is the case in an 830-g application.

One other indication supporting the idea that the Applicant does not have the facts or the law on its side is that the Applicant specifically denied the Intervenors access to the property. If they had no concern that our experts would find problematic conditions, why would they deny access?

Ignoring Other Environmental Concerns and Testimony

In addition to demonstrating the inadequacy of the Applicant's stormwater system design, the Intervenors presented evidence that the 804 Fountain Street project is reasonably likely to



“unreasonably pollut[e], impair[ing] or destroy[ing] the public trust in the air, water, or other natural resources of the state,” as stated in C.G.S. §22a-19

George Logan, of REMA Ecological Services, detailed the violation of Woodbridge Zoning regulation 495-23 that is reasonably likely to occur if this project is approved. The regulation cites “Preservation of Special Features and Air Pollution” as criteria for consideration. Logan’s report details the CTDEEP-designated *Critical Habitats* on the site that would be destroyed, and describes the *major adverse impact* on air quality that would result from this project. The applicant did not rebut these concerns; therefore, you are obliged to accept them as unchallenged.

Sigrun Gadwa’s report described the characteristics of the greenschist rock that makes up the ridge holding Bishop’s Pond in place. She provided commentary from a local geologist indicating that this type of rock is soft, and subject to splintering when blasted, thus endangering the very survival of the pond. No counter evidence was offered by the Applicant.

The Role of the Town Planner

At the December 1 meeting, the new Town Planner Mr. D’Amato overstepped his role by essentially appropriating the role of the Commission and opining as to the sufficiency of the application under the regulations. He appeared to be evaluating the application as if it were an as-of-right application, not a Special Exemption application which gives the commission considerable discretion, as enumerated in Woodbridge Zoning Regulations Section 6.3C:

Threshold for Granting a Special Exception

In deciding whether to grant a Special Exception, the Commission shall give consideration to, but not be limited by, the following:

1. The health, safety, and welfare of the public in general, and the immediate neighborhood, in particular, compliance with the Plan of Conservation and Development;
2. The location and size of the proposed use;
3. The nature and intensity of the proposed use and any operations involved in the use;
4. The safety and intensity of traffic circulation on the site, and on adjacent streets;
5. The scale of the proposed site and structure(s);
6. The harmony and appropriateness of the use and site design in relation to the general area and to adjacent properties; and



7. Compliance with the Zoning Regulations and the site plan objectives set forth in Section 6.4.C. Any permit granted under this Section shall be subject to any and all conditions and safeguards imposed pursuant to Section 6.3.D.

At the outset of his testimony, Mr. D'Amato admitted he is not an engineer, not a traffic engineer, not a stormwater or wastewater expert. He is also completely new to this project, having never been seen at a hearing on 804 Fountain until December 1. He said he has "done his best" to consume the vast amount of material in the application. Later, under questioning, he admitted he has not even visited the site.

The Application of Personal Knowledge

Regarding the traffic study and the lack of an expert to refute the applicant and town planner's assessment, Intervenors are restricted by law to address only environmental concerns, so there was no ability for another opinion on the matter of traffic.

Contrary to the Applicant's assertions, the Connecticut Supreme Court has held that, in determining whether the increase in the number of vehicles will have a negative impact on the existing use of the roads, the administrative agency "may rely on statements of neighborhood residents about the nature of the existing roads in the area and the existing volume of traffic, and its own knowledge of these conditions." *Cambodian Buddhist Soc'y of Conn., Inc. v. Planning & Zoning Comm'n of Newtown*, 285 Conn. 381, 434 (2008). A zoning commission may credit neighbors' traffic concerns over a traffic expert's report in a special permit application, provided that substantial evidence exists in the record to support its decision. Connecticut courts have consistently held that zoning commissions have significant discretion in evaluating evidence and determining credibility, **including the weight given to expert testimony versus lay observations**. Zoning commissions are afforded broad discretion in reviewing special permit applications, including the authority to assess the credibility of expert testimony and weigh it against other evidence, such as the concerns of neighboring residents. In *Jalowiec Realty Associates v. Planning and Zoning Com'n of City of Ansonia*, the court stated that a commission may discredit expert testimony if there is evidence in the record undermining the expert's credibility or conclusions. In that case, the commission relied on its personal knowledge of traffic safety and congestion, as well as a letter from the local police chief questioning the traffic impact of the proposed facility, to discredit the plaintiff's expert report *Jalowiec Realty Associates v. Planning and Zoning Com'n of City of Ansonia* (2006) 2006 WL 436661.

The Applicant's statement of the law is correct but limited. For example, in its argument regarding the intervention, he noticeably truncates the discussion to "pollution" when the full language of the statute refers to "unreasonably polluting, **impairing or destroying the**



public trust in the air, water or other natural resources of the state." It is also notable that his conclusion about the environmental impact is tellingly short: "All environmental claims raised by the Intervenors (1) fail the substantial evidence test in that they do not allege a specific harm and merely raise generalized concerns, or (2) are outside the jurisdiction of the Commission, or (3) both. See correspondence of William L. Kenny, dated August 20, 2025." The Applicant does not address the cases (sent previously) that allow the Commission to rely on their own information regarding traffic and ignores the serious issues raised by the Intervenors' environmental experts.

The Discretion of the Commission relating to Special Exceptions

The commission has stated that when it adopted the Opportunity Housing Regulations in December of 2024, it viewed them not as a rubber stamp but as a framework within which the commission could work. As stated in the minutes of the commission's meeting on May 20th, 2025, former chairman Klee specifically said that he was comfortable with the regulations because: "Special exceptions are subject to specific requirements in Section 6.3 of the Zoning Regulations, which includes a list of criteria for granting special exceptions." He went on to assure his commission and the public that the regulations provided "a maximum" they were not a guarantee to a developer.

Commissioner Hoffman further commented that "processing a special exception application is a robust process," indicating that the commission understands that it has substantial discretion to decide how to apply the regulations depending on the specifics of the site and the specific details of the proposed site plan.

The Applicant is only telling the Commission half the story. It is correct that intervenors must produce substantial evidence, but the Applicant summarily concludes that the Intervenors have not met the burden without taking the next step in the analysis. To trigger TPZ's obligation to consider feasible alternatives under § 22a-19(b), intervenors must produce evidence sufficient to establish a *prima facie* case of unreasonable environmental impairment. Substantial evidence requires a "substantial basis of fact" from which the fact in issue can be reasonably inferred. Intervenors must provide evidence identifying and specifying actual harm to the environment.

Expert testimony can satisfy the substantial evidence test if it provides specific, factual evidence of actual harm **likely** to occur to natural resources related to the site and the proposed activity. In other words, to meet the substantial evidence test, expert testimony must provide a detailed and factual basis for the claim of environmental harm. For example, the case law indicates that an environmental assessment report providing a detailed description of existing conditions and specific impacts on wetlands constitutes substantial evidence. If the TPZ finds



that the Intervenors have presented substantial evidence, then it has to look for reasonable and prudent alternatives.

Conclusion

The Intervenors have presented substantial evidence through qualified expert testimony that the 804 Fountain Street project poses significant environmental risks that warrant denial or substantial modification of this Special Exception application. The Intervenors experts have identified specific, factual harms including inadequate stormwater management systems, destruction of CTDEEP-designated Critical Habitats, adverse air quality impacts, and geological concerns regarding the stability of Bishop's Pond.

Despite the Applicant's attempts to discredit the Intervenor's experts and misrepresent both the legal standards and the facts of this case, the evidence in the record remains unrebutted on its merits. The Applicant has failed to address the substantive environmental concerns raised by Steven Trinkaus, George Logan, and Sigrun Gadwa. When the Applicant cannot refute the evidence, resorting instead to personal attacks and mischaracterizations of legal precedent, it speaks volumes about the weakness of its position.

This Commission has broad discretion under Section 6.3C of the Woodbridge Zoning Regulations to evaluate this Special Exception application based on multiple criteria, including public health and safety, environmental impact, and appropriateness for the site. It is not required to defer to the Applicant's experts or its attorney's legal interpretations. Connecticut law explicitly allows the Commission to rely on its own knowledge, the testimony of residents, and the substantial evidence presented by the Intervenors' qualified experts.

The Opportunity Housing Regulations were adopted as a framework with safeguards, not as a rubber stamp for development. As former Chairman Klee stated, these regulations provide "a maximum," not a guarantee. The Commission has both the authority and the obligation to protect Woodbridge's environmental resources and the public trust.

We respectfully urge the Commission to exercise its discretion, credit the substantial evidence in the record, and deny this application.

Very truly yours,

Brenton J. Elliott