

**Excerpt from Memorandum in Opposition to Motion  
for Restraining Order filed on July 15, 2025 in William  
Cruger, et al. v. Planning & Zoning Commission of the  
Town of Salisbury, LLI-CV25-6039537-S (Superior  
Court, Judicial District of Litchfield at Torrington)**

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**B. The Plaintiffs have an adequate remedy at law.**

The Plaintiffs claim that they have no adequate remedy at law because any application for a special permit application filed while this appeal was pending would be governed by the regulations in effect at the time of the filing of the application pursuant to C.G.S. § 8-2h, so that, even if the Plaintiffs were to prevail on appeal and the amendments were declared null and void, any approval obtained under the stricken regulations would still be valid because the regulations were in effect at the time the application.<sup>6</sup> The Plaintiffs' claim betrays a fundamental misunderstanding of the meaning of C.G.S. Sec. 8-2h, and is contradicted by case law.

C.G.S. § 8-2h(a) provides:

An application filed with a zoning commission, planning and zoning commission, zoning board of appeals or agency exercising zoning authority of a town, city or borough which is in conformance with the applicable zoning regulations as of the time of filing shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, any change in the zoning regulations or the boundaries of zoning districts of such town, city or borough taking effect after the filing of such application.

<sup>6</sup> While the Plaintiffs argue that C.G.S. § 8-2h requires that any special permit application will be governed by the current regulations even if they are found to be invalid (Plaintiffs' Brief, pp. 6, 9), they also dispute their own allegation, stating that they do not concede that any special permit under the current regulations would be valid. Plaintiffs' Brief, p. 18 & n.4. The Plaintiffs cannot have it both ways. If the Plaintiffs' 8-2h claim is the basis for claiming lack of an adequate remedy at law and irreparable injury, they cannot also claim that they did not really believe their own arguments at some later stage if they are unsuccessful in this motion.

Section 8-2h provides that applications are governed by zoning regulations in effect at the time of filing and do not have to comply with amendments to the zoning text or zoning map adopted by a board or commission after the application is filed. The purpose of Section 8-2h is not to create a right to construct projects that comply with illegally adopted regulations, but only to shield applicants from the obligation to comply with properly adopted amendments taking effect after the application is filed. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Com.*, 220 Conn. 527, 540-542 (noting that purpose of Section 8-2h was to overrule case law holding the court should apply the regulations in effect at the time of the appeal is decided, including subsequently adopted amendments to the regulations, instead of the regulations in existence at the time of the application). Gen Stat. Sec. 8-2h did not create a vested right to construct a project if the regulation under which a project is approved is found to be illegal.

The same argument made by the Plaintiffs here was rejected by Judge Berger in *Bielitz v. Wex-Tuck Realty, LLC*, 2018 Conn. Super. LEXIS 2166, \*12-14, J.D. Hartford, LND-CV14-605538 (August 30, 2018). In that case, the plaintiff brought a private zoning enforcement action (along with a nuisance claim) arguing that a special exception granted by the Newington Zoning Commission for a motor vehicle service use was illegal because the regulations upon which it was based were later found to be illegal. The property owner who had obtained the special exception argued that, even though

the zoning regulation authorizing the special exception was found to be illegal after the special exception was approved, the special exception itself was valid under Section 8-2h because it complied with all applicable regulations in place at the time the application was filed. Judge Berger rejected the plaintiff's claim:

The defendants' argument must be rejected as the clear language of the statute only focuses on changes made by a zoning authority, not by a court declaring a regulation and resulting action void.... Additionally, logic dictates against the defendants' argument; otherwise a judicial finding of invalidity would be of no effect. Thus, §8-2h(a) is not applicable here.

Id., \* 13-14.

Another example of a recent case where a local commission's decision to approve a special permit was overturned based on a zoning regulation that was found to be illegal is *MacKenzie v. Planning & Zoning Commission*, 146 Conn. App. 406 (2013). That case involved the appeal of a decision by the Monroe Planning & Zoning Commission approving a zone change and special exception for a McDonald's restaurant. The Commission approved the special exception after exercising the authority to vary certain setback and landscaping requirements that the Commission had granted to itself in certain regulations.

On appeal, the Appellate Court held that the regulations authorizing the Commission to vary the setback and landscaping requirements were illegal, since the authority to vary regulations has been delegated by the legislature exclusively to the local zoning board of appeals, and the authority to vary regulations on a case-by-case

basis also violated the uniformity requirement of Gen. Stat. § 8-2. As a result, it found that the Commission's approval of the special exception was illegal, because it had no authority to waive or vary the setback and landscaping regulations, and the proposal failed to comply with those regulations.

*MacKenzie* and *Bielitz* illustrate that Gen. Stat. § 8-2h does not create a vested right to have an application approved if the regulation that it is based on is found to be illegal. As both cases hold, if a special permit application is approved based on a zoning regulation that is found to be illegal, then that special permit will also be illegal. See also *Torello v. Board of Zoning Appeals*, 127 Conn. 307, 309-310 (1940) (Applicant who obtained a change in zoning to allow the construction of a mortuary acquired no vested right to proceed under the approval that was later held invalid simply because the an aggrieved party who prevailed on an appeal of the approval failed to obtain a restraining order.)

An administrative appeal is an adequate remedy at law to challenge the validity of a zoning decision. *Cretaro v. Equitec Real Estate Investors Fund XII*, 6 Conn. App. 317, 319 (1986) (plaintiffs are not entitled to bring a separate injunction action because zoning appeal is an adequate remedy at law). If an applicant who has obtained a zoning approval proceeds with construction while an appeal challenging that approval is pending (a stage that has not been reached in this case), it does so at its own peril, and the fact that an appeal is pending is not grounds in itself for granting a restraining order.

See *Billik v. Zoning Bd.*, supra, 1995 Conn. Super. LEXIS 1982, \*\*2, 8 (denying motion for restraining order to prevent construction of dwelling but noting that applicant proceeded at its own peril should the underlying decision approving a zoning text change and site plan were to be reversed); *Merolla v. Greenwich Planning & Zoning Bd. of Appeals*, 1998 Conn. Super. LEXIS 2583, \*2-5, J.D. Stamford-Norwalk, CV98-0165432 (September 14, 1998, D'Andrea, J.) (denying motion for restraining order, but commenting: "It must be noted that if construction is begun in pursuance of the defendant's favorable decision from the zoning board of appeals, it is done at the defendant's peril, and any construction might have to be torn down should the plaintiff prevail on this appeal."); *Weissberg v. Sachem's Head Ass'n Zoning Bd. of Appeals*, 2004 Conn. Super. LEXIS 3711, \*1-4, J.D. New Haven, CV04-4002068 (December 14, 2004, Hadden, JTR) (denying motion for restraining order but noting "The defendant Evans is aware that in proceeding with the construction while the appeal is pending she is in risk of being ordered to remove the house should the Plaintiffs ultimately prevail on their appeal.").

Accordingly, the motion for a restraining order should be denied because the Plaintiffs have an adequate remedy at law.