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NORMA KERLIN *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF GREENWICH ET AL.
(AC 45082)

Alvord, Cradle and Suarez, Js.

Syllabus

The plaintiff filed three separate appeals with the trial court, one from the decision of the defendant planning and zoning board of appeals affirming the decision of the defendant planning and zoning commission approving an application for the subdivision of a property in Greenwich, and two from the decisions of the commission approving two applications by the defendant P Co. for coastal area management site plans. The three applications had been submitted by the defendant P Co. for property located in an area accessible only by a private access drive that was approximately twelve feet wide. In its applications for coastal area management site plans, P Co. dedicated a fifty foot right-of-way through the subject property to comply with the front and side yard depth requirements found in the building zone regulations of the Greenwich Municipal Code (§§ 6-203 (b) and 6-205 (a)). The right-of-way was comprised of the twelve foot wide private access drive plus land to the east, most of which lay in tidal wetlands. P Co.'s applications did not propose the expansion of the existing twelve foot wide street but added two pull off areas that would not be located within the coastal wetland area. The trial court consolidated the three appeals and rendered judgments dismissing the appeal from the decision of the board affirming the commission's approval of the subdivision application and sustaining the plaintiff's appeals challenging the commission's decision to approve the coastal area management site plan applications. Specifically, the court held that the commission and the board had considered the environmental impact of the activity proposed within the applications. The court also held that § 6-203 (b), establishing minimum front and side yard depths on the basis of streets at least fifty feet wide, was not satisfied by P Co.'s proposed incorporation of the fifty foot right-of-way because that land partially encompassed wetlands and was not intended to be used as an actual roadway. Thereafter, the court granted P Co.'s motion for reargument and reconsideration and altered its judgments to dismiss the plaintiff's appeals in their entirety. On the granting of certification, the plaintiff appealed to this court. *Held*:

1. The trial court properly interpreted and applied the building zone regulations of the Greenwich Municipal Code to the facts before it: permitting the use of the entire fifty foot right-of-way, including the wetland portions not intended to be used for travel, as a paper street to measure compliance with § 6-203 (b) of the building zone regulations did not yield an absurd or unworkable result or thwart the purpose of the regulation, namely, to establish a point of measurement to satisfy the required depths of front and side yards; moreover, as the plaintiff did not provide any evidence demonstrating that the commission misapplied the building zone regulations and that its decisions approving the coastal area management site plans were unreasonable, arbitrary or illegal, the trial court's reliance on the right-of-way to satisfy the building space requirements of § 6-203 (b) did not constitute an abuse of its discretion.
2. The plaintiff could not prevail on her claim that the trial court erred in upholding the approvals of the subdivision and coastal area management site plan applications in the absence of evidence that the board or commission considered the impacts of the right-of-way on coastal resources: contrary to the defendants' claim, the plaintiff's appeal from the approval of the subdivision application was not moot, as this court was capable of granting relief to the plaintiff if it were to conclude that the trial court's determination that substantial evidence existed to show that the board had considered coastal impacts in ruling on the subdivision application was improper; moreover, substantial evidence in the record supported the court's conclusion that the commission and the board considered the environmental impact of the activity proposed in

the applications, including the testimony of consultants regarding the impacts of the proposed activity on coastal areas, evidence from the Department of Environmental Energy and Protection regarding the proposed activity's compliance with Connecticut Coastal Management Act policies, and reports from P Co.'s consultant and a memorandum from the Greenwich conservation commission regarding the environmental impact of the proposed activity; furthermore, it was undisputed that P Co.'s proposed activity did not contemplate expanding the private street beyond the addition of two gravel pull offs not located in the wetlands, the impact of which the commission considered, thus, the commission was not required to consider the impact of expanding the private street into the wetlands.

Argued November 9, 2022—officially released October 31, 2023

Procedural History

Appeal from the decision of the defendant board of appeals affirming the decision of the named defendant to approve a subdivision application and appeals from the decisions of the named defendant approving two applications for coastal area management site plans, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the appeals were consolidated and tried to the court, *Genuario*, *J.*; judgments sustaining in part and dismissing in part the plaintiff's appeals; thereafter, the court, *Genuario*, *J.*, granted the motion of the defendant Palmer Island, LLC, to reargue or reconsider and rendered judgments dismissing the plaintiff's appeals, from which the plaintiff appealed to this court. *Affirmed*.

Diana E. Neeves, with whom was *Brian R. Smith*, for the appellant (plaintiff).

Brendon P. Levesque, *with whom* was *John K. Wetmore*, town attorney, for the appellees (named defendant et al.).

Brendon P. Levesque, with whom, on the brief, were *Ryan P. Barry* and *W. I. Haslun II*, for the appellee (defendant Palmer Island, LLC).

Opinion

SUAREZ, J. The plaintiff, Norma Kerlin, appeals from the judgments of the trial court dismissing her appeals from (1) the decision of the defendant Planning and Zoning Board of Appeals of the Town of Greenwich (board), in which the board upheld the decision of the defendant Planning and Zoning Commission of the Town of Greenwich (commission) to approve an application for a subdivision and (2) the decision of the commission to approve two applications for coastal area management (CAM) site plans. The subdivision application and the two CAM applications were submitted to the commission by the defendant Palmer Island, LLC (applicant).[1] The plaintiff, who lives near the subject property, claims that the court erred (1) in upholding the commission's approval of the CAM site plan applications, misinterpreting a regulation and misapplying it to the facts before it, and (2) in upholding the two lot subdivision and the CAM site plan application approvals in the absence of evidence that the board or commission considered the impacts of the right-of-way on coastal resources. We affirm the judgments of the trial court.

The following facts, as were found by the court or were otherwise undisputed, and procedural history are relevant to our resolution of this appeal. The rulings at issue in this appeal were brought before the trial court by way of three appeals, all of which were based on the same record.[2] The court consolidated the appeals for trial. The court found that "[t]hese three appeals involve a decision by the [board] approving a subdivision of the subject property into two lots and two appeals from the [commission], each one approving a . . . [CAM] site plan. Each approved site plan proposes a single-family residential development on each of the lots newly created by the [commission's] subdivision approval. The subdivision proposal and the CAM site plan proposals were heard by the [commission] at the same time and the records before the [commission] for all three matters are the same. A somewhat unique provision of the Greenwich Town Charter requires subdivision approval for a division of a lot into two or more lots. Two of the appeals were taken in timely fashion after the [commission] approved the CAM site plans for development of the single-family residential properties. However, under the Greenwich Town Charter, the [board] is authorized to review and uphold or reverse the [commission's] action on a subdivision application. In this case, the entire record before the [commission] was made a part of the record before the [board]. Thus, the appeal of the subdivision approval is taken from the action of the [board], but the appeals from the CAM site plan approvals are taken from the decisions of the [commission].

"The subject property is located in Greenwich's R-

12 zone, a residential zone requiring a minimum lot size of 12,000 square feet, as well as a coastal overlay zone. The subject property is located in an area of Greenwich known as Palmer Island. Palmer Island is not currently an island; it is currently accessed by a private access drive that is approximately twelve feet in width. This private access drive has existed since at least 1926 and probably for many years before that. Prior to the subject subdivision, Palmer Island consisted of six lots, including the subject parcel, each of which supports a single-family residence.

"According to the application of the . . . [applicant], the entire project falls within the coastal hazard area as defined by the Federal Emergency Management Agency (FEMA). Immediately to the west of the property is Long Meadows Creek, a tidal water course. Tidal wetlands are located within the western and eastern boundary lines of the property. In the eastern section of the property most of the wetland is 'high marsh habitat.' In the western section it is mostly 'low marsh habitat.' The three applications taken together will result in the removal of an existing single-family residential structure located on the subject parcel which in many respects is nonconforming with current governmental regulations, including FEMA regulations, and the development of two new single-family residential structures, one on each of the two newly approved lots.

"The subject property is the northernmost parcel on Palmer Island and is the first parcel that one encounters as one drives up to and through Palmer Island to any of the other residential lots. All of the residential lots, including the subject lot on Palmer Island, are accessed not by a public road but by the private access drive, named South End Court. Title to the private access drive, until it reaches the southerly border of the subject property, is owned by [the applicant], but the five other Palmer Island parcels have rights of ingress and egress as well as other rights over and under that access drive. The remainder of the access drive beyond the southerly border of the subject property is owned by the Palmer Island Association, Inc. . . . The access drive is the sole means of ingress and egress from Palmer Island and at least some, if not all, of the Palmer Island residential lots receive their water supply by virtue of plastic water lines located beneath the access drive.

"The plaintiff, in her capacity as one of the three cotrustees of the Sander-Buchman Marital Trust, is a title holder of one of the single-family residential lots generally identified as 26 South End Court. The private access drive in all of its locations is known generally as South End Court. The subject property is identified as 10 South End Court. There is one lot between the plaintiff's property and the subject property. Accordingly, the plaintiff's property does not abut the [applicant's] property."[3]

On May 2, 2019, the applicant filed the current applications at issue with the commission. Specifically, the applicant sought approval of a subdivision application to subdivide the subject parcel into two lots and the approval of two CAM site plan applications to remove the existing buildings and construct two new single-family homes, one on each of the two newly created lots. To comply with the front yard depth requirement of the Greenwich building zone regulations; see Greenwich Municipal Code, c. 6, art. 1, §§ 6-203 (b) and 6-205 (a) (December, 2017) (building zone regulations);[4] the applicant, in the CAM site plan applications, dedicated a fifty foot wide right-of-way through the subject parcel, which was comprised of the existing twelve foot wide private road and the land to the east of it. Most of the land dedicated to the right-of-way that is located to the east of the private road lies in tidal wetlands. The applicant did not contemplate expanding the private road into the wetlands. Rather, as reflected in the applications, the only expansions the applicant proposed making to the private road were two pull offs that would be added to the north and west sides of the road; both pull offs were to have gravel surfaces, and neither would be located in a wetland area.

On August 20, 2019, the commission approved the CAM site plan applications after finding that they complied with the applicable regulations. In approving the applications, the commission found that the site plan applications were subject to §§ "6-5, 6-13–6-15, 6-111,[5] 6-139.1, and 6-205" of the building zone regulations. (Footnote added.) The commission also approved the subdivision application. The plaintiff appealed the commission's decision approving the subdivision application to the board, which denied the appeal on November 25, 2019. The board concluded that the application satisfied "all the town of Greenwich building zoning regulations and subdivision regulations . . . ." As stated previously in this opinion, under multiple docket numbers, the plaintiff appealed to the Superior Court from the decision of the board, as well as from the decisions of the commission approving the CAM site plan applications. See footnote 2 of this opinion.

Relevant to the claims raised in this appeal, the plaintiff argued to the court that (1) "[the commission] erred as a matter of law by failing to require compliance with § 6-203 (b) [of the building zone regulations] regarding the access drive" and (2) the commission and the board failed to consider the impact of imposing a right-of-way over coastal wetlands as required under § 6-111 of the building zone regulations and General Statutes §§ 22a-105 and 22a-106. The court, *Genuario*, *J.*, held a hearing on the matter on October 8, 2020. On January 27, 2021,[6] the court issued a memorandum of decision in which it sustained the plaintiff's appeals insofar as they challenged the commission's decision to approve the CAM

site plan applications.[7] The court also dismissed the appeal from the board's decision affirming the commission's decision approving the subdivision application.[8] With respect to the latter part of its judgments, the court concluded that the board and the commission had considered the environmental impact of the subdivision of the subject property. With respect to the CAM site plan applications, the court rejected the applicant's argument that § 6-203 (b) of the building zone regulations[9] could be satisfied by relying on the entirety of the fifty foot right-of-way in the site plan because the right-of-way in the site plan partially encompasses wetlands and was not intended to be developed as an actual roadway.

In its memorandum of decision, the court stated: "Both of the proposed lots which were subject to CAM site plan review are located in Greenwich's R-12 zone. The primary use contemplated in the R-12 zone is single-family residential dwellings on lots exceeding 12,000 square feet. Both of the proposed lots substantially exceed 12,000 square feet. The R-12 zone requires a thirty-five foot front yard. It also requires a ten foot side yard but an aggregate of the two side yards equal to not less than twenty-five feet. A front yard is defined in the [regulations] as 'an open space across the full width of the lot between the front wall of the principal building and the front lot line . . . .' [Greenwich Municipal Code, c. 6, art. 1, §] 6.5 (54) (December, 2017). The two site plans evidence that the principal buildings comply with this thirty-five foot front yard requirement and the side yard requirement. However, [§] 6-203 (b) [of the building zone regulations] requires an increase in the front and side yards under certain circumstances. [Section] 6-203 (b) provides: 'The required minimum front yard depths and street side yard widths are based on streets at least fifty (50) feet wide. For every foot less in width of a street the required depths and widths of the front yards and street side yards respectively are to be increased six (6) inches.' The Greenwich [building zone] regulations define street as '[s]treet shall mean and include all public and private streets, highways, avenues, boulevards, parkways, roads and other similar ways.' [Greenwich Municipal Code, c. 6, art. 1, §] 6-6 (46) [December, 2017]. . . .

"The subdivision regulations of Greenwich set forth a requirement for minimum street width in § 6-124 [of the building zone regulations]. Section 6-124 reads as follows: 'Minimum Street Width. (a) No plot shall be subdivided into lots and no lot shall be improved with one (1) or more buildings unless all such lots shall front upon a street having a minimum width of fifty (50) feet. (b) This limitation however shall not apply where the maximum width of a street in front of a given plot or lot on February 1, 1926 is less than fifty (50) feet.'

"The parties do not seem to disagree and there is

certainly evidence in the record from which the [commission] could have found that South End Court existed before February 1, 1926, and is therefore exempt from the fifty foot requirement in the subdivision regulations. However, no such exemption is applicable to the requirements of § 6-203 (b) [of the building zone regulations], which provides for increasing setbacks in the event a street upon which a house is being built is less than fifty [feet] wide.

"The homes on Palmer Island, including the homes to be built on the new proposed lots, are accessed by South End Court, which is a relatively narrow private right-of-way. The improved right-of-way, allowing for vehicular access, is approximately twelve feet wide. The [applicant's] property lies on both sides of South End Court. The proposed new subject lots lie to the west of South End Court and contain upland area suitable for construction of a single-family home. The area proposed for development, including driveways, are in upland areas. The area to the east of South End Court, directly across from [the] proposed lots is, for the most part, tidal wetlands. The [applicant] is the titleholder, not only of the subject proposed lots, but of the land below South End Court and of much of the tidal wetlands to the east of South End Court. The applications include with them proposals and commitments of the [applicant] to dedicate a right-of-way in the area of the existing South End Court and in the area to the east of the existing South End Court that is fifty feet wide. The vast majority of this newly dedicated right-of-way area to the east of the existing South End Court lies in the tidal wetlands. The [applicant] is also dedicating the balance of the tidal wetlands which it owns to the east of South End Court to open space.

"The [applicant] argues that, because it has dedicated land allowing for a fifty foot right-of-way [§] 6-203 (b) [of the building zone regulations] does not require increased setbacks. The [commission] in approving the site plans agreed with the [applicant]. The plaintiff argues that to dedicate land in a tidal wetland that cannot realistically be used for street purposes is a 'sham' and cannot result in the exemption of the [applicant] from the provisions of [§] 6-203 (b). If the [applicant] is not exempt from this provision, then the [applicant] must accommodate a larger front yard and side yard and [its] approved CAM site plans do not comply with the Greenwich zoning regulations because their front yards and side yards are not consistent with the more extensive front and side yards required by § 6-203 (b). Put more succinctly, if § 6-203 (b) applies, the [applicant's] site plans do not comply with the required front yard/side yards and the [commission's] decision approving them must be reversed. If § 6-203 (b) does not apply, then the site plans do comply with the Greenwich zoning regulations, and the decision of the [commission] must be affirmed (at least with regard to this

issue). In this regard, there is not much dispute as to the facts relating to the proposed right-of-way. The [applicant's] plans evidence that the vast majority of the newly dedicated right-of-way area lies to the east of South End Court in the tidal wetlands. According to the [applicant's] consultant, those tidal wetlands flood several times a month. They are by all accounts a sensitive environmental area and home to various plant and animal species. Moreover, the [applicant's] application demonstrates that most of this area is at an elevation of 5.5 feet above sea level or lower and, therefore, lies within the coastal area jurisdiction of the [Department of Energy and Environmental Protection (department)]. The [applicant's] application defines these tidal wetlands as a 'high marsh habitat.' Neither the [applicant] nor the [commission] suggested that there could actually be road or street improvements built in these tidal wetlands. As one commissioner put it, 'the roadway, the paved area is not *obviously* going—is not into the tidal wetland area.' . . .

"The [applicant] argued and the [commission] agreed that the [applicant] could avoid the application of § 6-203 (b) [of the building zone regulations], which increases the front and side yard requirements by dedicating this area of tidal wetlands as a fifty foot right-of-way. There is no indication anywhere in the record that the [commission] considered the impact on CAM resources, if there was even a modest infringement into the tidal wetlands for street improvement. Presumably, the [commission's] failure to consider any impact . . . of road widening on coastal resources resulted from its conclusion that such an infringement into the tidal wetlands was not contemplated or even a possibility, now or in the future.

"The [applicant] argues and the [commission] agreed that there are many roadways in Greenwich [that] are within a fifty foot right-of-way but upon which the paved or improved road is considerably narrower. Greenwich, in those situations, apparently does not require the application of § 6-203 (b) [of the building zone regulations]. This court does not need to decide and certainly does not suggest or imply that § 6-203 (b) requires increased front or side yards in the more typical situation posited by the [applicant] and observed by the [commission] in which an upland area is dedicated to a right-of-way. In those situations, the unimproved area is available for road expansion or improvement in the event the town considers such improvement necessary or desirable and chooses to widen a given roadway for public safety or other applicable reasons within their discretion. In the typical situation, the dedicated right-of-way is available for improvements if needed in the future. Indeed, and while beyond the scope of this decision, the court can envision many reasons why the town or citizens of a neighborhood within the town would prefer not to have a street widened for the entire width

of a fifty foot right-of-way.

"The more narrow issue before the court is whether or not the regulations [that] require [an] increased front or side yard when a road is less than fifty [feet] wide is applicable when a right-of-way is granted in an area that is under the jurisdiction of the [department] and in an area where all of the parties seem to agree that there is no intention to invade the tidal wetlands with a street improvement. The application additionally raises the question of whether or not, at a minimum, the [commission] was required to consider the impact of any potential road widening within the right-of-way on coastal area management resources." (Citations omitted; emphasis in orginal.)

The court explained that it had considered this court's analysis in *Field Point Park Assn., Inc.* v. *Planning & Zoning Commission*, 103 Conn. App. 437, 930 A.2d 45 (2007). The court stated that "[t]he lesson of *Field Point Park Assn., Inc.* . . . is that the proper construction of the [building zone] regulations must be read in context of all the regulations, and the evident purpose and policy and recognized principles of zoning in general. . . . In order to avoid the increased front and side yards contemplated by § 6-203 (b) of the [building zone] regulations, the dedication of a right-of-way must, at a minimum, be on property that has a somewhat feasible opportunity to be used for the purposes that streets are to be used for. The [applicant's] dedication of tidal wetlands under the jurisdiction of [the department] cannot meet that purpose."

Finally, the court stated that "[its] conclusion with regard to the application of § 6-203 (b) [of the building zone regulations] impacts only the approval of the coastal area site plans by the [commission]. Because the Greenwich subdivision regulations expressly allow the subdivision of a lot on a roadway that was built before 1926 and is less than fifty feet wide, this conclusion does not affect the [commission's] or the [board's] approval of the subdivision itself. The subdivision could well be approved based upon a twelve foot street, which the [commission] and the [board] clearly did without any consideration of widening the street into the tidal wetlands. . . . [T]here is ample evidence in the record from which the [commission] and the [board] could have determined that there was not a significant adverse impact on the coastal area resources from the subdivision itself. Accordingly, the court's ruling in this regard requires a reversal of the [commission's] approval of the coastal area site plans but does not require a reversal of the approval of the subdivision."

On February 16, 2021, following the court's decision, the applicant filed a motion to reargue. The applicant acknowledged, as the court found, that "there was no . . . proposal before [the commission] to extend the road further into the tidal wetlands and therefore no

environmental impact to consider, other than that occasioned by the actual proposal before it, which the [commission] and [the department] found satisfactory." Although the applicant did not draw the court's attention to any evidence in the record, it stated that the court had improperly speculated that improvements to South End Court cannot be made in the future. The applicant stated that its original application provided for the widening of the road but that it revised its application "when it became apparent that no one . . . *preferred* to have the road widened or felt it necessary or desirable." (Emphasis in original.)

The applicant also argued that the court improperly had assumed that the purpose of § 6-203 (b) of the building zone regulations was solely related to the construction of developed or improved roads. The applicant argued that §§ 6-203 (b) and 6-124[10] "were intended in pertinent part to require such width to further the separation of structures and to establish the edge of the right-of-way as the proper line from which to measure setbacks, rather than the edge of the paved or improved portion of the road. This is evidenced by the fact that [§] 6-203 (b) requires greater setbacks when a right-of-way is deficient in width, not the dedication of additional property to the right-of-way or the widening of the road." On February 26, 2021, the court granted the motion to reargue over the plaintiff's objection and heard arguments on April 6, 2021.

Upon reconsideration, the court reversed, in part, its prior decision and concluded that, in its original decision, it had improperly "focused on what it perceived to be the primary purpose of § 6-203 (b) [of the building zone regulations], which the court determined was to provide an area for expansion of a roadway should the town determine, sometime in the future, that conditions required expansion of the roadway. . . . The court based its conclusion on its determination that the purpose of § 6-203 (b) was to provide the municipality with an ability to utilize the additional property within the dedicated street lines for future street widening without creating nonconformities. . . . However, upon reconsideration, the court believes it overlooked another important purpose of § 6-203 (b) besides the potential provision for land widening purposes. One of the significant purposes of setback requirements is to require buildings to be built a certain distance from each other. . . . The purpose of § 6-203 (b) is at least in part to ensure that houses continue to be built the same distance from each other as contemplated in the building zone regulations regardless of the width of the actual roadway surface. This explains the reason why [under § 6-203 (b)] the setback is increased on each side of the roadway by [one] half [of one] foot for every foot that the roadway fails to meet the fifty foot requirement. . . .

"The court had overlooked this important purpose of § 6-203 (b) [of the building zone regulations] and particularly the language used within it which provides support for the [commission's] conclusions. Because the purpose of requiring a certain distance between the construction of buildings on opposite sides of the road is served by the dedication of a fifty foot right-of-way, regardless of the likelihood that it will be utilized for actual roadway purposes, [the commission's] determination that § 6-203 (b) does not require an extended setback provides for a reasonable and rational result." (Citations omitted.) Thereafter, the court altered its judgments to dismiss the plaintiff's appeals in their entirety.

The plaintiff then filed a petition for certification to appeal with this court. On October 28, 2021, after this court granted the plaintiff's petition for certification to appeal, she filed her appeal to this court.[11] Additional facts and procedural history will be set forth as necessary.

Before addressing the plaintiff's claims, we first set forth the deferential standard of review that applies to the administrative decisions made by zoning entities. "In traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has acted in its legislative or administrative capacity. . . . In considering either an application for a special permit or an application for subdivision approval, a commission acts in an administrative capacity. . . . Generally, it is the function of a zoning board or commission to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The [Appellate Court and the] trial court . . . decide whether the board correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts. . . . In applying the law to the facts of a particular case, the board is endowed with a liberal discretion, and its action is subject to review by the courts only to determine whether it was unreasonable, arbitrary or illegal." (Citations omitted; internal quotation marks omitted.) *Drewnowski* v. *Planning and Zoning Commission*, 220 Conn. App. 430, 447–48, 299 A.3d 259 (2023).

"[U]pon appeal, the trial court reviews the record before the board to determine whether it has acted fairly or with proper motives or upon valid reasons . . . . We, in turn, review the action of the trial court. . . . The burden of proof to demonstrate that the board acted improperly is upon the party seeking to overturn the board's decision . . . ." (Citation omitted; internal quotation marks omitted.) *Raymond* v. *Zoning Board of Appeals*, 76 Conn. App. 222, 229, 820 A.2d 275, cert. denied, 264 Conn. 906, 826 A.2d 177 (2003). "Courts are

not to substitute their judgment for that of the board . . . and decisions of local boards will not be disturbed so long as honest judgment has been reasonably and fairly exercised after a full hearing." (Internal quotation marks omitted.) *Horace* v. *Zoning Board of Appeals*, 85 Conn. App. 162, 165, 855 A.2d 1044 (2004).

I

The plaintiff first claims that, in upholding the commission's approval of the CAM site plan applications, the court improperly interpreted the building zone regulations and misapplied the regulations to the facts before it. Specifically, she argues that the court improperly concluded that the area of tidal wetlands dedicated to the right-of-way could be used to constitute a "street" under § 6-203 (b) of the building zone regulations and thereafter relied on the width of that "street" for purposes of calculating the setback requirement of proposed buildings. The plaintiff's claim challenges both the interpretation and application of § 6-203 (b). We will address each of these issues in turn.

We note that, in the site plan applications, one of the new lots has a front yard depth of thirty-five feet, and the other has a front yard depth of forty-one feet. On the basis of their location in the R-12 zone, the building zone regulations require the front yards to be at least thirty-five feet deep if the street that they border is fifty feet wide. Greenwich Municipal Code, c. 6, art. 1, §§ 6-203 (b) and 6-205 (a) (December, 2017).

The plaintiff argues that an interpretation of the building zone regulations permitting the entire width of a right-of-way to be considered as a "street" ignores the commonly understood meaning of the word "street" and would lead to a bizarre and unreasonable result. As the plaintiff observes, in this case, the dedicated right-of-way at issue is, in part, actually comprised of wetlands that are not planned to be used as a road that is suitable for vehicular travel. In support of her position, the plaintiff argues that the definition of the word "street" under § 6-5 (46) of the building zone regulations,[12] and under this court's decision in *Field Point Park Assn., Inc.* v. *Planning & Zoning Commission*, supra, 103 Conn. App. 444, supports her interpretation.

The plaintiff argues that the court's interpretation of § 6-203 (b) of the building zone regulations in its initial decision must control because it is more plausible than its interpretation of the regulation in the decision that it rendered after granting the applicant's motion for reconsideration. In the plaintiff's view, the court's interpretation in the decision it rendered after granting the motion for reconsideration creates a "bizarre and unreasonable result of designating tidal wetlands as part of a 'street.' " She asserts that this interpretation is inconsistent with a cohesive reading of the building zone regulations.

The plaintiff also states that, contrary to what the applicant argued in its motion to reargue, the commission's approval of the right-of-way as laid out in the applications is not authorized by statute, the town charter, or the subdivision regulations. "It follows [she argues] that the provisions cited in the applicant's motion to reargue cannot be read to broadly authorize the commission to vary the application of . . . [the] minimum street width requirements [of § 6-203 (b) of the building zone regulations] on a case-by-case basis."

The defendants argue that, in *Park Construction Co.* v. *Planning & Zoning Board of Appeals*, 142 Conn. 30, 37, 110 A.2d 614 (1954), our Supreme Court addressed the identical question of law at issue in the present appeal, namely, whether the entirety of a fifty foot right-of-way was properly considered a "street" for purposes of the Greenwich building zone regulations when only a portion of the right-of-way was developed as a road suitable for travel. On the basis of our Supreme Court's prior interpretation of what constitutes a "street" for purposes of the Greenwich building zone regulations, they assert that we should give deference to the commission's construction of the regulation at issue in this appeal. Alternatively, the defendants assert that, if the interpretation of the word "street" under the building zone regulations is a matter of first impression, zoning laws are to be " 'construed against rather than in favor of a restriction,' " and that, when there are two equally plausible interpretations of a regulation, this court may give deference to the construction the agency charged with enforcement of the regulation adopts. Therefore, the defendants contend that a zoning agency is given liberal discretion in the interpretation of its own regulations and applying the law to the facts, and, thus, courts may only review an agency's decision as to whether it was unreasonable, arbitrary or illegal.

The defendants then argue that the plain language of the regulation supports the court's conclusion that the entire width of a dedicated right-of-way may be used to satisfy the building spacing requirements of § 6-203 (b) of the building zone regulations. They further argue that, if the plain meaning of the word "street" is ambiguous, the regulatory purpose of § 6-203 (b) supports a conclusion that the word "street" includes rights-of-way. The regulatory purpose of § 6-203 (b), the defendants argue, is to ensure that buildings are constructed a certain distance apart to limit housing density. In support of this position, they point to how § 6-203 (b)'s requirement that "[f]or every foot less [than fifty feet] in width of a street the required depths and widths of front yards and street side yards respectively are to be increased [by] six (6) inches," results in a consistent minimum distance between two buildings on opposite sides of a street regardless of whether the street bordering these properties consists of a traveled roadway that

is narrower than fifty feet. Therefore, they assert, it is not material, for the purpose of § 6-203 (b), that a portion of the land dedicated to a right-of-way is not accessible for vehicular travel. The defendants contend this reading of the regulation is consistent with the building zone regulations in their entirety.

A

Having discussed the parties' arguments, we now turn to the issue of whether the court properly concluded that the commission interpreted the building zone regulations correctly. We begin by setting forth additional principles governing our review of this issue.

"Because the interpretation of the regulations presents a question of law, our review is plenary. . . . Additionally, zoning regulations are local legislative enactments . . . and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes. . . . Ordinarily, [appellate courts afford] deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when [an] agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . [I]t is for the courts, and not administrative agencies, to expound and apply governing principles of law." (Internal quotation marks omitted.) *Putnam Park Apartments, Inc.* v. *Planning & Zoning Commission*, 193 Conn. App. 42, 47, 218 A.3d 1127 (2019).

Our Supreme Court has observed that "regulations must be interpreted in accordance with the principle that a reasonable and rational result was intended . . . and the words employed therein are to be given their commonly approved meaning." (Internal quotation marks omitted.) *Rapoport* v. *Zoning Board of Appeals*, 301 Conn. 22, 34, 19 A.3d 622 (2011). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning . . . [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.)

Moon v. *Zoning Board of Appeals*, 291 Conn. 16, 21, 966 A.2d 722 (2009).

"Regulations must be viewed to form a cohesive body of law, and they must be construed as a whole and in such a way as to reconcile all their provisions as far as possible. . . . This is true because particular words or sections of the regulations, considered separately, may be lacking in precision of meaning to afford a standard sufficient to sustain them. . . . When more than one construction is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results. . . . [W]e consider the statute as a whole with a view toward reconciling its parts in order to obtain a sensible and rational overall interpretation." (Citations omitted; internal quotation marks omitted.) *Field Point Park Assn., Inc.* v. *Planning & Zoning Commission*, supra, 103 Conn. App. 440–41. Stated otherwise, whether the board properly interpreted and applied the relevant regulations depends upon whether it read the particular regulations "in the context of all of the regulations, their evident purpose and policy, and recognized principles of zoning in general." Id., 441.

We first address the defendants' assertion that the commission's interpretation of the regulation is entitled to deference because it has already been subject to judicial scrutiny in our Supreme Court's decision in *Park Construction Co.* Although we agree with the defendants that an agency's interpretation of a regulation it is empowered by law to carry out is entitled to deference when the interpretation has been subject to judicial review; see *Putnam Park Apartments, Inc.* v. *Planning & Zoning Commission*, supra, 193 Conn. App. 47; we are not convinced that the commission's interpretation has been subject to such review.

In *Park Construction Co.*, our Supreme Court held that the Greenwich building zone regulations' definition of a "street" included the entire width of a fifty foot wide right-of-way even though only twenty feet of the right-of-way had actually been developed for vehicular traffic.[13] *Park Construction Co.* v. *Planning & Zoning Board of Appeals*, supra, 142 Conn. 38–40. This determination was necessary to resolve the issue of whether the parcel that the right-of-way benefitted had access to a public road as required by the building zone regulations. Id. Unlike *Park Construction Co.*, the present appeal concerns the issue of whether, for purposes of compliance with § 6-203 (b) of the building zone regulations, the commission may consider the entire width of a fifty foot right-of-way, which includes wetlands that are neither suitable nor intended to be used for vehicular traffic, to be a "street." It is significant that, in *Park Construction Co.*, it was not a point of contention, nor was it a subject of the court's analysis, whether the undeveloped portion of the right-of-way

was suitable to be developed and used for roadway purposes. Nor was the issue of what constitutes a "street" relevant to compliance with § 6-203 (b). Given these distinctions between the issues in the present case and *Park Construction Co.*, the commission's interpretation of the regulations at issue cannot be said to have been the subject of judicial scrutiny in *Park Construction Co.*, and, therefore, the commission's interpretation is not entitled to deference.

As previously discussed, pursuant to § 6-203 (b) of the building code regulations, "[t]he required minimum front yard depths and street side yard widths are based on streets at least fifty (50) feet wide. For every foot less in width of a street the required depths and widths of front yards and street side yards respectively are to be increased six (6) inches." A review of the plain language of § 6-203 (b) reflects that the subject of the regulation is not the size, design, or location of streets, but front yard depths and side yard widths. To the extent that the regulation refers to the streets and the width of streets, it does so not to mandate the feasibility, usability, or size of streets, but to establish a point of measurement so that the front yard depth and side yard width requirements may be satisfied.

We recognize that, in the present case, the commission was presented with a site plan application that reflected an actual street that was twelve feet in width, which street was compliant with applicable zoning regulations. The CAM site plan applications submitted to the commission, and pertaining to the same development scheme, however, reflected a fifty foot right-of-way that encompassed the existing street. Relying on the fifty foot right-of-way, which cannot be said to be arbitrary in light of the fifty foot requirement for streets that are not subject to the grandfathering clause, does not lead to an irrational or bizarre result for, as the court recognized, it serves the spacing requirements of § 6-203 (b) of the building zone regulations.

Thus, we agree with the trial court that, in light of the evident purpose of § 6-203 (b) of the building zone regulations, it is not dispositive whether the "street," by which the required sizes of front yards and side yards are measured, exists as a street that is capable of vehicular travel or whether it exists as a paper street that is designated as a right-of-way on a site plan. "Black's Law Dictionary (8th Ed. 2004) [p. 1462] defines a paper street or road as '[a] thoroughfare that appears on plats, subdivision maps, and other publicly filed documents, but that has not been completed or opened for public use.' But see *Simone* v. *Miller*, 91 Conn. App. 98, 101 n.1, 881 A.2d 397 (2005), citing *Burke* v. *Ruggerio*, 24 Conn. App. 700, 707, 591 A.2d 453 (describing paper street as one never paved, not developed as public road, not used by abutting owners for access, no formal dedication for use as highway and no formal or informal

acceptance by town), cert. denied, 220 Conn. 903, 593 A.2d 967 (1991) . . . .'' (Citation omitted.) *Kores* v. *Calo*, 126 Conn. App. 609, 616 n.6, 15 A.3d 152 (2011). Land dedicated as a street or road on a site plan, though unpaved, unimproved, and inaccessible to traffic, ''is what is commonly referred to as a 'paper street.' '' *Meder* v. *Milford*, 190 Conn. 72, 73, 458 A.2d 1158 (1983); see also *Katz* v. *West Hartford*, 191 Conn. 594, 596, 469 A.2d 410 (1983) (noting that balance of unimproved land that was designated as street on subdivision plan constitutes '' 'paper street' '').

The necessity for the use of paper streets on site plans, such as that at issue in the present case, which by definition depict things that do not exist, in an attempt to evaluate whether a proposed development complies with applicable regulations, is readily apparent. It strains logic to suggest that the utilization of and the reliance on a paper street is improper in a situation such as the present one. We are not persuaded that the utilization of a paper street as a tool to obtain compliance with the spacing requirements of § 6-203 (b) of the building zone regulations, as described, undermines the decision of the administrative agency entrusted to interpret the regulation and apply it.

Pursuant to § 6-124 (a) of the building zone regulations, ''[n]o plot shall be subdivided into lots and no lot shall be improved with one (1) or more buildings unless all such lots shall front upon a street having a minimum width of fifty (50) feet.'' Despite the fact that, in the present circumstance, compliance with § 6-124 (a) was not required pursuant to the grandfathering provision in § 6-124 (b),[14] permitting the use of a paper street to measure compliance with § 6-203 (b) of the building zone regulations does not yield an absurd or unworkable result. Nor does it thwart the purpose of the regulation, namely, to mandate the depths of front yards and the widths of side yards and, thus, limit building density to the extent required by the existence of a fifty foot wide street as is mandated under the regulations.

The requirement of § 6-203 (b) of the building zone regulations that a building's setback from the road be an additional six inches for every foot the street is narrower than fifty feet ensures that a minimum distance is maintained between buildings regardless of a street's width. The fact that the regulation does not require the yards that a street borders to be usable for vehicular traffic supports the conclusion that its purpose does not concern whether the land between the buildings is suitable for travel, vehicular or otherwise. We therefore conclude, on the basis of our interpretation of § 6-203 (b), that the entire width of a right-of-way that is comprised, in part, of wetlands that are not intended to be used for travel may properly be considered a street under the building zone regulations.

Furthermore, this interpretation of the building zone regulations favors development and, therefore, comports with the principle of zoning interpretation that, "[w]here more than one interpretation of language is permissible, restrictions upon the use of lands are not to be extended by implication . . . [and] doubtful language will be construed against rather than in favor of a restriction . . . ." (Internal quotation marks omitted.) *Wihbey* v. *Zoning Board of Appeals*, 218 Conn. App. 356, 383, 292 A.3d 21, cert. granted, 346 Conn. 1019, 292 A.3d 1254 (2023). For the foregoing reasons, we conclude that the court correctly interpreted § 6-203 (b) of the building zone regulations.

B

Having concluded that the court did not misinterpret the building zone regulations, we now turn to the portion of the plaintiff's claim in which she asserts that the court misapplied them. In addressing this portion of the claim, we recount that, "[i]n applying the law to the facts of a particular case, the [court] is endowed with a liberal discretion, and its decision will not be disturbed unless it is found to be unreasonable, arbitrary or illegal." (Internal quotation marks omitted.) *Raymond* v. *Zoning Board of Appeals*, supra, 76 Conn. App. 229. To the extent that the plaintiff claims that the court misapplied the building zone regulations, she provides us with nothing to demonstrate that the commission's decision was unreasonable, arbitrary, or illegal. Without demonstrating that the commission did not reasonably and fairly come to an honest judgment with respect to the matter before it, we have no basis on which to conclude that the court misapplied the building zone regulations when it approved the applications. See *Taylor* v. *Planning & Zoning Commission*, 218 Conn. App. 616, 631, 293 A.3d 357 ("[c]ourts are not to substitute their judgment for that of the board, and . . . the decisions of local boards will not be disturbed as long as honest judgment *has been reasonably and fairly made after a full hearing*" (emphasis in original)), cert. denied, 346 Conn. 1022, 293 A.3d 897 (2023). The plaintiff has not demonstrated that the court's reliance on the right-of-way reflected an abuse of its discretion.

II

Next, the plaintiff claims that the court erred in upholding the subdivision and CAM site plan application approvals in the absence of evidence that the board or commission considered the impacts of the right-of-way on coastal resources.

A

We must first address a mootness argument that was raised by the defendants, namely, that, insofar as the plaintiff appeals from the approval of the subdivision application as opposed to the CAM site plan applications, the appeal is moot, in part, because the plaintiff

failed to challenge the application of the grandfathering clause of § 6-124 (b) of the building zone regulations, which the applicant characterizes as an independent basis that the trial court relied on for upholding the approval of the subdivision.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction . . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) *that the determination of the controversy will result in practical relief to the complainant*. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Peterson* v. *Torrington*, 196 Conn. App. 52, 57–58, 229 A.3d 119, cert. denied, 335 Conn. 921, 232 A.3d 1104 (2020).

As our Supreme Court has observed, "[w]here an appellant fails to challenge all bases for a trial court's adverse ruling on his claim, even if this court were to agree with the appellant on the issues that he does raise, we still would not be able to provide [him] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citation omitted; internal quotation marks omitted.) *State* v. *Lester*, 324 Conn. 519, 526–27, 153 A.3d 647 (2017).

As a preliminary matter, the plaintiff asserts that, on appeal, she has challenged the subdivision approval because "the grandfathering clause is irrelevant to the issue of whether the trial court properly affirmed the subdivision approval when the zoning authorities had not fully considered the potential impacts of the approved plan on coastal resources." We note that, in its January 27, 2020 decision, the court expressly found that there was substantial evidence that the subdivision and CAM site plan applications "were consistent with coastal area management policies" and that both entities had taken into account both the impact of the proposed development and coastal management concerns. In the present claim, the plaintiff plainly challenges the trial court's finding that such an impact had been considered.

We disagree that the trial court's application of the grandfathering clause to the facts of the present case

was an independent basis for its ruling. Here, the plaintiff challenges the sole basis on which the trial court dismissed the appeal from the approval of the subdivision application, namely, its conclusion with respect to whether the board had given due consideration to coastal management area policies and the impact of the proposed subdivision. The record reflects that such approval was governed by a broad regulatory scheme that encompassed coastal area management policies. Thus, we are able to grant relief to the plaintiff if we conclude that the trial court improperly determined that there was substantial evidence to show that the board had considered coastal impacts in ruling on the subdivision application. For the foregoing reasons, we disagree that the appeal from the approval of the subdivision application is moot.

B

Having resolved the jurisdictional issue raised by the defendants, we now turn to the merits of the plaintiff's claim that the court erred in upholding the subdivision and site plan application approvals in the absence of evidence that the board or commission considered the impacts of the right-of-way on coastal resources. The plaintiff argues that the court could not affirm the decision of the board given that it found that the commission never considered the impact on coastal resources that would result from the expansion of the private road within the right-of-way from the existing twelve feet to the entire fifty feet that the proposed right-of-way encompasses under the applications. We are not persuaded.

The following facts are relevant to the resolution of this issue. As set forth in the applications, the proposed activity before the commission would leave the existing twelve foot wide private road at its current width, with the exception of two pull -off areas that were to be added on the north and west sides of the road, neither of which would be located within a coastal wetland area. The private road would not be expanded into the wetland area encompassed within the right-of-way.

The commission had before it reports assessing the compliance of the proposed activity, the applications outlined with coastal management policies and the impact the proposed activity would have on coastal resources from the applicant's consultant, professional soil and wetland scientist, William Kenney. Kenney stated in his report that the pull off areas that would be added to the private road would not have an adverse environmental impact due to their gravel surfaces, which would allow for the infiltration of stormwater. On the basis of an email from the department, the commission found that the "[department] found the [proposed activity] to be consistent with Connecticut Coastal Management Act policies . . . ." The Greenwich conservation commission stated concerns about

the environmental impact of the proposed activity in a memorandum, which the commission acknowledged in its approval of the applications.

At the commission's public hearings on the applications, the impact of the proposed activity on coastal resources was discussed extensively. Members of the commission voiced concerns about the size of the buildings proposed to be built and heard testimony from the applicant's counsel and Kenney stating that decreasing the size of the buildings would have no environmental benefit. Kenney further discussed that, as part of the site plans, the applicant would add plants to the subject parcel in order to provide a buffer for the coastal wetlands, as the plantings would filter runoff and mitigate erosion. The commission also heard from the plaintiff's expert, Robert Sonnichsen, a professional engineer, regarding concerns that approval of the subdivision plan would have an adverse impact on coastal resources. Sonnichsen also stated that he believed the buffers Kenney had discussed would not be effective in protecting the coastal wetlands.

The plaintiff argues that, on the basis of the court's finding that the commission never considered the impact of widening the existing private road into the portion of the right-of-way containing coastal wetlands, the court erred when it affirmed the approval of the right-of-way in the tidal wetlands. The defendants argue that the commission needed to only consider the "proposed activity" to comply with the statutes and building zone regulations and, therefore, the commission did not need to consider the impact of expanding the existing private road into the wetlands because this was not part of the proposal. The defendants further argue that substantial evidence in the record supports the court's conclusion that the environmental impact of the proposed activity was considered. We agree with the defendants.

Before addressing the plaintiff's claim, we first set forth our standard of review. The parties disagree over which standard of review applies. The plaintiff argues that the proper standard of review for this claim is the "clearly erroneous" standard, while the defendants assert the proper standard of review is the "substantial evidence" standard. Our case law is clear that "[j]udicial review of zoning commission determinations is governed by the substantial evidence standard . . . ." *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 600, 170 A.3d 73 (2017); see *Sams* v. *Dept. of Environmental Protection*, 308 Conn. 359, 374, 63 A.3d 953 (2013); *Hescock* v. *Zoning Board of Appeals*, 112 Conn. App. 239, 248, 962 A.2d 177 (2009).

Under the substantial evidence standard, "[c]onclusions reached by [the] commission must be upheld by the trial court if they are reasonably supported by the

record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [commission]. . . . The question is not whether the trial court would have reached the same conclusion . . . but whether the record before the [commission] supports the decision reached. . . . If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission. . . . The [commission's] decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given. . . .

"The substantial evidence standard is one that is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review. . . . In that vein, our Supreme Court has described the substantial evidence standard as an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and to provide a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action. . . .

"In an appeal from a decision of a zoning commission, the burden of overthrowing the decision . . . rest[s] squarely upon the appellant." (Citations omitted; internal quotation marks omitted.) *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, supra, 176 Conn. App. 600–602.

"[Sections] 22a-105 (e) and 22a-106 (b) direct municipalities, when reviewing a coastal site plan, to determine whether the potential adverse impacts of the proposed activity on coastal resources are acceptable. The term 'coastal resources' is defined, generally, as the coastal waters of the state and their natural resources, and shoreline marine and wildlife habitats. General Statutes § 22a-93 (7)." *Sams* v. *Dept. of Environmental Protection*, supra, 308 Conn. 406. Section 6-111 of the building zone regulations requires the commission to review and approve all coastal site plans and "consider . . . the potential effects . . . of the proposed activity on coastal resources . . . ." Greenwich Municipal Code, c. 6, art. 1, § 6-111 (c) (D) (6) (b) (December, 2017).

The record reflects that, during public hearings on the applications, the commission heard from consultants regarding the impacts of the proposed activity on coastal resources. The consultants spoke both to the reasons that they believed the proposed activity would, and would not, have an adverse impact on the coastal environment. The commission also sought and received approval from the department regarding the proposed

activity's compliance with Connecticut Coastal Management Act policies. Furthermore, the commission had before it a report from the applicant's consultant and a memorandum from the Greenwich conservation commission regarding the environmental impact of the proposed activity. On the basis of the record and transcripts, there is substantial evidence to support the board's conclusion that the commission considered the environmental impact of the proposed activity. See *Hescock* v. *Zoning Board of Appeals*, supra, 112 Conn. App. 245–50 (record showing zoning board reviewed application with attached material demonstrating lack of impact on coastal resources, reviewed letter from environmental analyst, and heard from architect addressing environmental analyst's concerns, contained sufficient evidence for board to consider impact of development on coastal resources).

The plaintiff nonetheless argues that the court's finding that the commission did not consider the impact of widening the existing private road to the full width of the fifty foot right-of-way precluded the court from affirming the decision of the board. The plaintiff is mistaken as to what the statutes and building zone regulations require. Under §§ 22a-105 (e) and 22a-106 (b), and under § 6-111 of the building zone regulations, the commission was required to consider only the potential impact of the *proposed* activity on coastal resources. See *Sams* v. *Department of Environmental Protection*, supra, 308 Conn. 406. Here, it is not in dispute that the applicant's proposed activity did not contemplate expanding the private road beyond the addition of two gravel pull offs, the impact of which the commission considered. Thus, the commission was not required to consider activities beyond those proposed in the applications.

The plaintiff further argues that the approval of the fifty foot wide right-of-way "implies that the [entire] right-of-way has been approved for use by vehicular and other traffic," and, therefore, the commission was required to consider the impact of widening the road into the coastal wetlands. In support of this, she points to the portion of the *Park Construction Co.* decision, in which our Supreme Court stated that, although expanding a road that passed through a right-of-way to the total width of the right-of-way would violate the zoning regulations, there could be no objection to the use of the private road to access the parcel which it benefitted because "the road exist[ed] as a fait accompli . . . ." *Park Construction Co.* v. *Planning & Zoning Board of Appeals*, supra, 142 Conn. 40.

We do not read *Park Construction Co.* to state that an area necessarily has been approved for vehicular traffic simply by virtue of its having been designated as a right-of-way. In *Park Construction Co.*, our Supreme Court did not state that the road designated for vehicu-

lar traffic could be expanded to the full fifty foot width of the right-of-way without approval from the commission. Rather, it stated that, regardless of whether the regulations permitted the expansion of the road to the full fifty foot width of the right-of-way, the development of the twenty foot wide road, as it existed, had been approved and, therefore, the use of the road to access the parcel that the right-of-way benefitted could not be contested. See id., 39–40. Apart from her reliance on *Park Construction Co.*, the plaintiff provides no support to substantiate her concern that if the town approves the right-of-way containing wetlands, then the wetland portion of it can be developed and used for vehicular travel without any prior approval from the relevant agencies. Accordingly, we are not persuaded that the commission's approval of the applicant's expansion of the right-of-way necessarily, as the plaintiff argues, implies that the wetlands within the right-of-way have been approved for traffic use.

The judgments are affirmed.

In this opinion the other judges concurred.

[1] The applicant, the board, and the commission are named as defendants in the underlying actions. In this opinion, we will refer to these entities collectively as the defendants. In this appeal, the board and the commission adopted the applicant's brief pursuant to Practice Book § 67-3.

[2] In *Kerlin* v. *Planning & Zoning Commission*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-19-6047732-S, the plaintiff appealed from the commission's approval of a CAM site plan application for lot 2 in the subdivision. In *Kerlin* v. *Planning & Zoning Commission*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-19-6047735-S, the plaintiff appealed from the commission's approval of a CAM site plan application for lot 1 in the subdivision. In *Kerlin* v. *Planning & Zoning Commission*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-20-6047733-S, the plaintiff appealed from the board's decision upholding the commission's approval of a plan to subdivide the subject property into two lots.

[3] The court determined that the plaintiff was both classically and statutorily aggrieved, and it determined that the plaintiff had standing pursuant to General Statutes § 22a-19 to bring the appeals to the extent that she raised environmental issues within the purview of that enactment. These aspects of the trial court's decision are not challenged in the present appeal.

[4] All references herein to the building zone regulations are to the version of the regulations updated through December, 2017, unless otherwise indicated.

[5] Chapter 6, art. 1, § 6-111, of the Greenwich Municipal Code provides in relevant part: "(c) (A) Coastal Site Plan review and approval by the Planning and Zoning Commission and, as applicable, by the Planning and Zoning Board of Appeals shall be required for all projects and activities as defined in Section 22a-105 (b) of the Connecticut Coastal Management Act fully or partially within the Coastal Overlay Zone. These activities shall include but not limited to all applications for building permits, subdivisions, rezoning, special permits, special exceptions, variances, and Municipal Improvements. . . ."

[6] The court's memorandum of decision is dated January 27, *2020*. We interpret this to be a scrivener's error as the trial court record indicates that the court issued its memorandum of decision on January 27, *2021*.

[7] These appeals were brought under Docket Nos. CV-19-6047732-S and CV-19-6047735-S.

[8] This appeal was brought under Docket No. CV-20-6047733-S.

[9] Chapter 6, art. 1, § 6-203, of the Greenwich Municipal Code is titled "Open Spaces, Height and Bulk of Buildings," and provides in relevant part: "(b) The required minimum front yard depths and street side yard widths are based on streets at least fifty (50) feet wide. For every foot less in width of a street the required depths and widths of front yards and street side

yards respectively are to be increased six (6) inches."

[10] Chapter 6, art. 1, § 6-124, of the Greenwich Municipal Code provides: "(a) No plot shall be subdivided into lots and no lot shall be improved with one (1) or more buildings unless all such lots shall front upon a street having a minimum width of fifty (50) feet.

"(b) This limitation however shall not apply where the maximum width of the street in front of a given plot or lot on February 1, 1926 is less than fifty (50) feet."

[11] General Statutes § 8-9 provides: "Appeals from zoning commissions and planning and zoning commissions may be taken to the Superior Court and, upon certification for review, to the Appellate Court in the manner provided in section 8-8."

General Statutes § 8-8 (o) provides: "There shall be no right to further review except to the Appellate Court by certification for review, on the vote of three judges of the Appellate Court so to certify and under such other rules as the judges of the Appellate Court establish. The procedure on appeal to the Appellate Court shall, except as otherwise provided herein, be in accordance with the procedures provided by rule or law for the appeal of judgments rendered by the Superior Court unless modified by rule of the judges of the Appellate Court."

"This court's grant of certification in a zoning matter is considered 'extraordinary relief,' granted only in limited circumstances." *Murphy* v. *Zoning Board of Appeals*, 86 Conn. App. 147, 155, 860 A.2d 764 (2004), cert. denied, 273 Conn. 910, 870 A.2d 1080 (2005).

[12] Chapter 6, art. 1, § 6-5 (46), of the Greenwich Municipal Code defines "street" as "all public and private streets, highways, avenues, boulevards, parkways, roads, and other similar ways."

[13] In *Park Construction Co.*, our Supreme Court analyzed a previous version of the Greenwich building zone regulations. *Park Construction Co.* v. *Planning & Zoning Board of Appeals*, supra, 142 Conn. 37 n.3. The definition of the term "street" in the prior regulations, however, was materially identical to the definition found in the both the December, 2017 and the current building zone regulations. See Greenwich Municipal Code, c. 6, art. 1, § 6-5 (46) (December, 2017); Greenwich Building Code, c. 6, art. 1, § 6-5 (46) (2023).

[14] See footnote 10 of this opinion.