UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SIGN PRO, INC., ET AL	:	NO.: 3:23-cv-00651-SRU
	:	
v.	:	
	:	
TOWN OF SOUTHINGTON, ET AL	:	MARCH 30, 2026

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. PROCEDURAL AND FACTUAL BACKGROUND

The Local Rule 56(a)1 Statement of Undisputed Material Facts ("LRS") is adopted in its entirety and incorporated herein by reference. (LRS ¶¶ 1-53).

The plaintiffs commenced this case by way of a Connecticut Superior Court complaint dated April 25, 2023 against the Town of Southington and its former Building Official, Jeffrey Pooler. [Doc. #1-1.] Defendants removed the case to the District Court on May 19, 2023. [Doc. #1.] On October 31, 2023, plaintiffs filed the First Amended Complaint, adding former Town Manager of the Town of Southington, Mark Sciota, and the former Chairwoman of the Town Council, Victoria Triano as defendants. [Doc. #37.] The plaintiffs' Third Amended Complaint dated June 26, 2025 adds former Town Attorney and current Town Manager, Alex Ricciardone, and current Town Council Chair, Paul Chaplinsky to the suit. [Doc. #76.]

This case arises from plaintiffs' ongoing disagreements with the Town of Southington regarding permitting, inspections and enforcement of local code requirements. Although framed as a constitutional challenge, plaintiffs' allegations concern routine municipal functions. These processes were applied to plaintiffs in the same manner as to other applicants, and that plaintiffs ultimately obtained approvals for

the projects at issue upon compliance with applicable requirements. (LRS ¶¶ 1-2, 9-11, 17-23, 27, 36, 41.) The plaintiffs' Third Amended Complaint, advances three claims: (1) Substantive Due Process pursuant to the Fifth Amendment against all defendants; (2) Violation of Equal Protection pursuant to the Fourteenth Amendment against all defendants; and (3) Municipal Estoppel Against the Town of Southington. [*See* Doc. #76.]

The operative Complaint advances three "categories" of allegations, to support these claims. First, plaintiffs contend that the Town failed to pursue enforcement action against other sign contractors to plaintiffs' satisfaction, which they claim placed them at a competitive disadvantage. Second, plaintiffs challenge the permitting and inspection process associated with their 161 Canal Street project, asserting that delays and additional requirements were improper. *Id*. Third, plaintiffs point to a small number of project-specific permitting and inspection issues, including at locations such as 1 North Main Street and 1 Center Street, and characterize those interactions as part of a broader pattern of unfair treatment. *Id*. But these allegations do not describe constitutional violations. (LRS ¶¶ 1-4, 7-8, 12-14, 20-41.) Rather, they reflect ordinary features of municipal administration: complaint-driven enforcement, discretionary decisions regarding whether and how to pursue potential violations, and project-specific permitting determinations based on applicable code requirements and the information provided by the applicant.

As set forth below in more detail below, plaintiffs' dissatisfaction with those processes does not give rise to a federal claim.

II. STANDARD OF REVIEW ON SUMMARY JUDGMENT

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The substantive law governing the case will identify those facts that are material, and 'only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Bouboulis v. Transp. Workers Union of Am.*, 442 F.3d 55, 59 (2d Cir. 2006), *quoting Anderson* 477 U.S. at 248.

The moving party bears the burden of demonstrating the absence of a genuine issue as to any material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986). In determining whether a material issue of fact exists, the Court must resolve all ambiguities and draw all inferences against the moving party. See Anderson, 477 U.S. at 255. The party opposing summary judgment "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 256. Thus, once the moving party has satisfied its burden of identifying evidence which demonstrates the absence of a genuine issue of material fact, the non-moving party is required to go beyond the pleadings by way of affidavits, depositions, and answers to interrogatories in order to demonstrate specific material facts which give rise to a genuine issue. *See Celotex*, 477 U.S. at 324. The non-moving party "must do more than simply show that there is some

metaphysical doubt as to the material facts." *Matasushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

The moving party seeking summary judgment satisfies their burden of demonstrating that there exists no genuine issue of material fact in dispute where they point to the absence of evidence to support an essential element of the non-moving party's claim. See Celotex Corp. v. Catrett, 477 U.S. at 322-23. "A defendant need not prove a negative when it moves for summary judgment on an issue that the plaintiff must prove at trial. It need only point to an absence of proof on the plaintiff's part, and, at that point, plaintiff must designate specific facts showing that there is a genuine issue for trial." Parker v. Sony Pictures Entertainment, Inc., 260 F.3d 100, 111 (2d Cir. 2001) (internal quotation marks omitted), citing Celotex, 477 U.S. at 324.

III. PLAINTIFFS' CLAIM OF SUBSTANTIVE DUE PROCESS FAILS AS A MATTER OF LAW

A. PLAINTIFFS' FIFTH AMENDMENT DUE PROCESS CLAIM FAILS AS A MATTER OF LAW

Plaintiffs bring their due process claim under the Fifth Amendment. The Fifth Amendment's Due Process Clause applies only to actions of the federal government, not to state or municipal actors. See, e.g., *Dusenbery v. United States*, 534 U.S. 161, 167 (2002) ("The Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person of property without 'due process of law.'"); *Lee* v. *City of Los Angeles*, 250 F.3d 668, 687 (9th Cir. 2001); *see also* Morin v. *Caire*, 77 F.3d 116, 120 (5th Cir. 1996)("[T]he Fifth Amendment applies only to the actions of the federal government, and not to the actions of a municipal government as in the present case.");

cf. Dusenbery v. *United States*, 534 U.S. 161, 167, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002) *Ambrose v. City of New York*, 623 F. Supp. 2d 454, 466 (S.D.N.Y. 2009) ("Because plaintiff's lawsuit does not allege any deprivation of his rights by the federal government, any due process claim he has against the City is properly brought under the Due Process Clause of the Fourteenth Amendment, not under that of the Fifth Amendment."). *DeMartino v. New York State Dept. of Labor*, 167 F. Sup. 3d 342, 357 n.8 (E.D.N.Y. 2016) (dismissing plaintiff's Fifth Amendent Due Process claims because plaintiffs only named state government bodies and officials in their complaint.)

Because all defendants are municipal entities, employees, officials, and/or volunteers, the Fifth Amendment is inapplicable and plaintiffs' Due Process claim fails. Nonetheless, to the extent the Court construes plaintiffs' claim as arising under the Fourteenth Amendment, it still fails for the independent reasons set forth below. To establish a substantive due process violation, plaintiffs must show both (1) a constitutionally protected property interest and (2) government conduct so egregious, arbitrary, and oppressive that it "shocks the conscience." They can establish neither.

B. PLAINTIFFS LACK A CONSTITUTIONALLY PROTECTED PROPERTY INTEREST

To state a due process violation, plaintiff must first show a deprivation of a constitutionally protected property or liberty interest. *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049, 1061-62 (2d Cir. 1993); *Costello v. McEnery*, 1994 WL 410885 *4 (S.D.N.Y. Aug. 3, 1994), aff'd, 57 F.3d 1064 (2d Cir. 1995). It is only when such a right is established that the court may turn to a discussion of whether there has been a deprivation of that right without due process. But plaintiffs had no constitutionally protected entitlement to the permits, approvals, or enforcement actions at issue. "To

have a property interest…[h]e must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *The Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972). In the land use and permitting sphere, the Second Circuit has adopted Roth's entitlement analysis. "Application of the test must focus primarily on the degree of discretion enjoyed by the issuing authority, not the estimated probability that the authority will act favorably in a particular case." *RRI Realty Corp. v. Inc. Vill. of Southampton*, 870 F.2d 911, 918 (2d Cir. 1989). Where a municipal decisionmaker retains significant discretion, no constitutionally protected property interest arises. Id.; see also *Yale Auto Parts, Inc. v. Johnson*, 758 F.2d 54, 59 (2d Cir. 1985); *Clubside, Inc. v. Valentin*, 468 F.3d 144, 154 (2d Cir. 2006)(analysis of whether there is a protectable property interest in a particular land use benefit turns on the degree to which state and local law unambiguously limits the Board's discretion to deny petition.)

The regulatory schemes governing building permits, zoning approvals, inspections, and code enforcement in Connecticut vest substantial discretion in municipal officials. *See* Conn. Gen. Stat. §§ 29-260 (vesting enforcement of the State Building Code in local officials), 8-2 and 8-3 (authorizing municipal regulation and review of land use and structures). Consistent with State statutes' delegation of authority, the Building Code further provides:

> "The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to adopt policies and procedures to clarify the application of its provisions." Connecticut State Building Code § 104.1.
>
> "The building official is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise." Connecticut State Building Code § 104.4.

> "Whenever there is insufficient evidence of compliance… the building official shall have the authority to require tests as evidence of compliance" Connecticut State Building Code § 104.11.2.

These statutory and regulatory frameworks require officials to exercise judgment in evaluating applications, interpreting code provisions, and determining what information is necessary to act on an application and achieve compliance. The same is true for enforcement decisions, including whether, when, and against whom to pursue violations. Because those determinations are inherently discretionary, any claim of clear entitlement to approval is precluded. Plaintiffs cannot establish any clear entitlement to permits, approvals, or enforcement actions.

The Town's permitting process operates through the exercise of discretion. Applications are reviewed for compliance with applicable building and zoning requirements, and officials may require additional documentation, revisions or clarification where necessary to determine compliance. (LRS ¶¶ 1-2, 7, 10-11.) That iterative, compliance-driven process—rather than any fixed entitlement to approval—forecloses any claim of a constitutionally protected property interest.

Even assuming *arguendo* that plaintiffs could establish a protected property interest, the record conclusively demonstrates that no deprivation occurred. Plaintiffs obtained approval for each project for which they applied after participating in the ordinary permitting process and satisfying applicable requirements. (LRS ¶¶ 9-11, 17-23, 27, 36, 41.) Where approvals ultimately issue, (as they did for each and every permit applied for) no constitutional deprivation exists as a matter of law.

C. The Town Of Southington And Individual Defendants Did Not Engage In Arbitrary And Outrageous Conduct That Would Shock The Conscience

Once a protected property interest is established, to succeed in a substantive due process claim, the "plaintiff must show a fundamental right protected by the Constitution, a deprivation of that right, and arbitrary and outrageous state conduct that satisfies the shocks the conscience standard." *Walker v. City of Waterbury*, 601 F. Supp. 2d 420, 424 (D. Conn. 2009), aff'd, 361 F. App'x 163 (2d Cir. 2010) (Internal quotation marks omitted.) "Arbitrary conduct that might violate zoning regulations as a matter of state law is not sufficient to demonstrate conduct so outrageously arbitrary as to constitute a gross abuse of governmental authority that will offend the substantive component of the Due Process Clause." *Natale v. Town of Ridgefield*, 170 F.3d 258, 262 (2d Cir. 1999). Substantive due process "does not forbid governmental actions that might fairly be deemed arbitrary or capricious and for that reason correctable in a state court lawsuit seeking review of administrative action. Substantive due process standards are violated only by conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority." *Id*. at 263. *See Silverman v. Barry*, 845 F.2d 1072, 1080 (D.C. Cir. 1988) ("Only a substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights, qualifies for relief under § 1983.").

Even accepting plaintiffs' allegations as true, the conduct they describe (delays, additional requirements, disputed code interpretations, and allegedly inconsistent enforcement) falls far short of the demanding "shocks the conscience" standard. The undisputed record reflects that the Town applied a structured, code-driven permitting

process in reviewing plaintiffs' applications, including requiring compliance with applicable building and zoning requirements, requesting additional documentation where necessary, and permitting revisions or resubmissions to address deficiencies. (LRS ¶¶ 1-2, 10-12.) The conduct of the Building Department was consistent with accepted practices of Connecticut-licensed building officials, further confirming that the challenged actions reflect routine regulatory judgment rather than arbitrary conduct. (LRS ¶ 8.) Where plaintiffs failed to comply with permitting requirements, the Town issued violations and required corrective action—standard enforcement measures consistent with municipal practice. (LRS ¶¶ 7, 24-27.)

The Calvanese Plaza awning application further demonstrates that the Town's review process was conducted in good faith and grounded in code-based decision-making. There, when plaintiffs identified an applicable code exception, the Building Official acknowledged the issue and revised his interpretation, and the permitting process continued based on separate, legitimate structural considerations. (LRS ¶¶ 32-36.) This is the opposite of arbitrary conduct. It reflects responsiveness to information and the reasoned application of governing standards. Moreover, the record confirms that enforcement decisions are not exhaustive or uniform, but instead reflect discretionary, context-dependent determinations regarding which violations warrant action. (LRS ¶¶ 4, 7-8, 27.) Such variability is inherent in municipal enforcement and reflects practical limitations and professional judgment, not arbitrary or conscience-shocking conduct.

Plaintiffs actively engaged in the permitting process, communicating with Town officials, submitting materials, and pursuing approvals through the system. (LRS ¶¶ 9-

11.) Plaintiffs submitted numerous permit applications through the Town's system and received determinations in the ordinary course, undermining any claim of targeted treatment. (LRS ¶ 11.) Plaintiffs also engaged in repeated requests for information, including through Freedom of Information Act requests concerning permitting and enforcement activity. (LRS ¶¶ 12-13, 17.) Their communications included broad allegations of misconduct and challenges to the validity of the Town's processes. (LRS ¶ 13-14, 18.) In response to the volume and nature of these communications, the Town structured communications through designated intermediaries or counsel. (LRS ¶ 14.) Even during periods of dispute, plaintiffs retained full access to the permitting process. (LRS ¶ 11.) To the extent plaintiffs rely on alleged inconsistencies in enforcement, the record reflects only that some violations may not have been identified or pursued, which is an expected feature of discretionary enforcement, not evidence of unconstitutional conduct. (LRS ¶ 4, 7-8, 12-15.)

With respect to the 1 North Main Street (Apple Valley Pharmacy) project, plaintiffs applied for permits, a code-related issue was identified, and plaintiffs submitted additional materials in response. (LRS ¶¶ 20-22.) The Town ultimately approved the project and issued a Certificate of Approval confirming compliance with applicable requirements, yet plaintiffs continued to challenge Town action. (LRS ¶ 23.) Critically, there was no deprivation of any property interest. Plaintiffs received the approval they sought after participating in the ordinary permitting process.

The same is true of the 1 Center Street (M&T Bank) project. Plaintiffs performed work without first obtaining the required permit, were issued a violation consistent with standard enforcement practices, and thereafter obtained the necessary approvals upon

compliance. (LRS ¶¶ 24-27.) Plaintiffs further complicated that process by refusing to provide the means necessary for inspection, despite their obligation to do so under the governing code. (LRS ¶¶ 28-30.) The Town nevertheless continued to process the application and offered alternative methods of inspection. (LRS ¶¶ 27-30.) This sequence—noncompliance, enforcement and ultimate approval—confirms that plaintiffs were not deprived of any property interest but instead were required to comply with the same permitting and inspection requirements applicable to all contractors.

Plaintiffs' own conduct further underscores the absence of any constitutional violation. The record reflects repeated disputes with Town officials, demands for records, and continued challenges to the permitting process, even after approvals were granted. (LRS ¶¶ 12-14, 20, 23.) This confirms that plaintiffs' claim is not one of deprivation, but of dissatisfaction with routine regulatory procedures.

At most, plaintiffs allege disagreement with how local officials exercised their regulatory authority. That is not a constitutional violation. Government regulation violates substantive due process only where it lacks any legitimate basis. *Shelton v. City of College Station*, 780 F.2d 475, 483 (5th Cir. 1986). Here, every challenged action, requiring permits, requesting documentation, issuing violations for noncompliance, and conducting inspections, serves a legitimate governmental purpose grounded in public safety and code enforcement.

Plaintiffs' claim is therefore not that they were denied permits, but that they disagree with the steps required to obtain them. That is insufficient as a matter of law. "[S]ubstantive due process does not forbid governmental actions that might fairly be deemed arbitrary or capricious" under state law. *Natale*, 170 F.3d at 263. Where, as

here, plaintiffs obtained the approvals they sought and were subject only to ordinary regulatory requirements, no substantive due process violation can be established.

IV. PLAINTIFFS' EQUAL PROTECTION CLAIM FAILS AS A MATTER OF LAW

A. PLAINTIFFS CANNOT IDENTIFY SIMILARLY SITUATED COMPARATORS

To prevail on a "class-of-one" equal protection claim, a plaintiff must show that it was "intentionally treated differently from others similarly situated" and that there is no rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). The Second Circuit has made clear that this is a demanding standard, requiring an "extremely high degree of similarity" between the plaintiff and the alleged comparators. *Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006). Plaintiffs are required to establish that they and their comparators are "prima facie identical" and that the circumstances are so similar that any differential treatment lacks a reasonable nexus to legitimate governmental policy. *Hu v. City of New York*, 927 F.3d 81 (2019); *Bill & Ted's Riviera, Inc. v. Cuomo*, 494 F. Supp. 3d 238 (2020). Plaintiffs cannot meet that standard.

In *Pappas v. Town of Enfield*, the plaintiff challenged the denial of a subdivision application, alleging that the planning and zoning commission treated her differently from other developers without a rational basis. *Pappas v. Town of Enfield*, 18 F. Sup. 3d 164 (D. Conn. 2014). There, the record reflected extensive technical concerns, and discretionary decision-making by local officials following multiple hearings. Notably, the plaintiff in *Pappas* had obtained a favorable ruling in state court, which found the denial of her application to be "arbitrary" and an abuse of discretion under Connecticut law. Id. at 171. Nevertheless, the federal court granted summary judgment to the defendants on

the equal protection claim, holding that the plaintiff failed to identify similarly situated comparators with the requisite "extremely high degree of similarity" and failed to negate the existence of any rational basis for the decision. *Id*. The Court further emphasized that even allegedly incorrect or arbitrary land-use decisions under state law do not rise to the level of a constitutional violation. *Id*.

Plaintiffs' pleadings and complaints regarding the Town rely on vague references to projects and "other" sign companies allegedly operating in the Town of Southington. These generalized allegations do not identify any specific comparator, much less one similarly situated in all material respects. Plaintiffs lack any factual basis to establish any purported comparator operated under the same circumstances. Plaintiffs do not and cannot identify whether other companies applied for the same permits, submitted similar construction documents, proposed similar structures or installations or were subject to same code requirements or site conditions. (LRS ¶¶ 9-11, 37-41.) This failure alone is fatal to their claim.

Plaintiff's own testimony confirms the absence of any comparator evidence. Plaintiffs did not identify any similarly situated contractor permitted to perform comparable work without complying with applicable permitting and code requirements, and admitted that no such company exists. (LRS ¶ 15.) Plaintiffs further lack knowledge of other contractors' pricing, bidding practices, or business models and therefore cannot assess whether any differences in project outcomes are attributable to municipal conduct or independent commercial factors. (LRS ¶¶ 18-19.) This absence of evidence is dispositive under the Second Circuit's "extremely high degree of similarity" standard.

Assuming any comparator can be identified, plaintiffs cannot establish that any such comparator operated under materially identical circumstances. Each project presents distinct technical and site-specific considerations that directly affect permitting requirements. Differences in sign size, height, configuration, and location—as well as site-specific structural conditions, wind loads, and engineering requirements—dictate whether additional documentation, including engineered drawings, is required. (LRS ¶¶ 1-4, 37-41.) These are not minor distinctions; they are dispositive in a regulatory scheme that depends on technical evaluation and professional judgment. The Town evaluates each application based on these project-specific considerations and may require additional materials to determine compliance with applicable codes. (LRS ¶¶ 1-4, 9-10.) Such inherently individualized review precludes any finding of "prima facie identical" comparators.

Plaintiffs' theory further rests on speculation regarding how other contractors obtained work or navigated the permitting process. Plaintiffs admit they do not know the terms of other contractors' bids, the representations made to clients, the scope of those projects, or the materials submitted to the Town. (LRS ¶ 18.) Critically, plaintiffs operated their own business pursuant to internal pricing and markup practices independent of the Town's permitting requirements. (LRS ¶ 16.) These independent business variables such as internal pricing and markup decisions—rather than any municipal action—provide obvious, market-driven, non-discriminatory explanations for any perceived differences in outcomes.

Moreover, plaintiffs cannot negate the existence of a rational basis for the Town's actions. The record reflects multiple legitimate governmental bases for each challenged

decision, including enforcement of applicable building and zoning codes, evaluation of project-specific structural and safety considerations, and the requirement that applicants submit sufficient documentation to demonstrate compliance. (LRS ¶¶ 1-4, 7-8; 24-30; 37-41.) Where plaintiffs failed to comply with permitting requirements, the Town required corrective action or issued violations—standard enforcement measures applied to all applicants. (LRS ¶¶ 4, 32-34.)

The record also forecloses any claim of intentional or malicious differential treatment. The Building Official testified that he did not intentionally treat plaintiffs differently from other applicants, and no Town official instructed him to do so. (LRS ¶ 5.) The Town Manager likewise testified that he was unaware of any pattern of disparate treatment. (LRS ¶ 7.) Plaintiffs submitted numerous applications through the Town's system and received determinations in the ordinary course, further undermining any claim of selective treatment. (LRS ¶ 11.) This undisputed testimony negates the intent element required for a class-of-one claim.

To the extent plaintiffs rely on alleged instances of non-enforcement against other parties, such evidence reflects only the practical realities of discretionary municipal enforcement. The Town does not—and cannot—identify and pursue every potential violation, and enforcement decisions necessarily reflect context, visibility and resource considerations. (LRS ¶¶ 4, 7-9.) Such discretion is inherent in municipal regulation and does not constitute unconstitutional selectivity.

Finally, plaintiffs cannot establish any cognizable injury attributable to the alleged differential treatment. Plaintiffs obtained approvals for all projects for which they applied upon compliance with applicable requirements. (LRS ¶¶ 17, 20-23, 27, 36, 41.) They

cannot identify any measurable economic harm caused by the Town's permitting or enforcement practices, and their claimed damages are speculative and unsupported. (LRS ¶ 19.) As in *Pappas*, where the court rejected a constitutional claim despite alleged arbitrariness under state law, plaintiffs' inability to show both differential treatment and resulting harm is fatal to their claim.

In sum, plaintiffs have failed to identify any similarly situated comparator, failed to negate the existence of a rational basis, and failed to demonstrate intentional or malicious treatment. Their claim rests on speculation and disagreement with routine regulatory processes—not a constitutional violation. Summary judgment should enter in defendants' favor on the equal protection claim.

B. Plaintiffs Cannot Show Irrational Or Malicious Treatment

Even if plaintiffs could identify similarly situated comparators in materially identical circumstances, their claim independently fails because they cannot demonstrate that any differential treatment lacked a rational basis. A class-of-one plaintiff must show that the challenged conduct was "irrational and wholly arbitrary." *Village of Willowbrook v. Olech*, 528 U.S. at 565 (2000). This standard is highly deferential, and a claim fails where "any reasonably conceivable state of facts" could provide a rational basis for the challenged action. *See Pappas* (2014).

Here, the record establishes several rational, non-discriminatory bases for the challenged conduct, including: (1) the need to evaluate compliance with applicable building and zoning codes; (2) project-specific structural and engineering requirements; (3) the authority to require additional documentation or revisions; (4) enforcement of permitting requirements where work was performed without a permit; (5) discretionary,

complaint-driven enforcement; and (6) ordinary administrative constraints, including backlog, staffing limitations, and volume of applications. (LRS ¶¶ 1-4, 6-8, 24-30, 32-36, 37-41.) These are precisely the types of discretionary, fact-dependent determinations that courts routinely hold are not subject to constitutional scrutiny.

The Town's permitting process is structured and compliance-driven. Applications are submitted through a centralized system, reviewed for compliance with applicable code requirements, and, where necessary, supplemented with additional documentation or revised submissions to address identified deficiencies. (LRS ¶¶ 2-4.) Where work is performed without permits, applicants are required to come into compliance through the same permitting process, including through issuance of violations and corrective action. (LRS ¶¶ 24-27, 32-34.) This uniform requirement provides a clear and legitimate basis for the Town's actions.

The record further confirms the absence of any irrational or targeted conduct. The Building Official testified that he did not intentionally treat plaintiffs differently from other applicants and that no one instructed him to do so. (LRS ¶ 5.) The Town Manager likewise testified that he was not aware of any concern or pattern of differential treatment and described the Building Official as applying the Code "by the book." (LRS ¶ 7.) This uncontroverted testimony alone defeats any claim that the Town's actions were irrational, malicious, or motivated by improper considerations.

To the extent plaintiffs characterize defendants' conduct as "pretextual" or "harassing," those assertions are unsupported by evidence and insufficient to create a triable issue. The Equal Protection Clause does not guarantee error-free or perfectly uniform enforcement of local regulations, nor does it constitutionalize disagreements

over permitting decisions. *See Pappas*, 18 F. Supp. 3d at 171 (rejecting equal protection claim despite allegations of arbitrary decision-making under state law). Rather, the relevant inquiry is whether any rational basis exists.

Plaintiffs' reliance on alleged instances of non-enforcement against other parties likewise fails to establish irrationality. The record reflects only that some installations may occur without permits or may not be immediately identified, which is an expected consequence of discretionary municipal enforcement. (LRS ¶¶ 4, 7-9.) The Town does not—and cannot—identify and pursue every potential violation, and enforcement decisions necessarily reflect practical limitations, visibility, and professional judgment. Such realities do not render enforcement decisions arbitrary; they confirm that the system operates within ordinary municipal constraints.

Finally, plaintiffs cannot demonstrate that any alleged differential treatment resulted in a cognizable injury. Plaintiffs obtained approvals for their projects upon compliance with applicable requirements, and any delays or additional requirements arose from the ordinary permitting process or plaintiffs' own noncompliance—not from irrational or baseless decision-making. (LRS ¶¶ 17, 24-27; 32-34.) As in *Pappas*, where the Court rejected a constitutional claim despite allegations of improper decision-making, plaintiffs' inability to negate a rational basis is fatal to their claim.

At bottom, plaintiffs seek to transform ordinary, discretionary municipal regulation into a federal constitutional violation. The Second Circuit has consistently rejected such attempts. Because plaintiffs cannot establish the absence of a rational basis for the Town's actions, their equal protection claim fails as a matter of law.

V. PLAINTIFFS CANNOT ESTABLISH MUNICIPAL LIABILITY (*MONELL*)

A municipality may not be held liable under 42 U.S.C. § 1983 solely because it employs a tortfeasor. Monell v. Department of Social Services, 436 U.S. 658, 691 (1978). Instead, a plaintiff must identify an official municipal policy, a widespread and persistent custom, or an action by a final policymaker that caused the alleged constitutional deprivation. *Id*. at 694. Where, as here, no underlying constitutional violation exists, municipal liability necessarily fails. *See Segal v. City of New York*, 459 F.3d 207, 219 (2d Cir. 2006). Even setting that threshold defect aside, plaintiffs cannot satisfy any of the requirements for municipal liability.

A. PLAINTIFFS CANNOT IDENTIFY ANY OFFICIAL POLICY

Plaintiffs point to no formally adopted policy, ordinance, regulation, or directive of the Town that allegedly caused the claimed constitutional violation. Instead, their claims arise from discrete permitting and enforcement decisions relating to their own projects. The undisputed record reflects that those decisions were made through the application of the Connecticut State Building Code and local zoning requirements to project-specific facts, including structural considerations, site conditions, and compliance submissions. (LRS ¶¶ 1-6, 37-41.)

Such individualized determinations, requiring documentation, evaluating compliance, and issuing permits or violations based on specific circumstances, are not municipal policy within the meaning of Monell. They are routine regulatory functions inherent in municipal governance.

B. PLAINTIFFS CANNOT ESTABLISH A WIDESPREAD OR PERSISTENT CUSTOM

Plaintiffs likewise fail to identify any widespread or persistent practice sufficient to constitute a municipal custom. To establish such a custom, a plaintiff must show conduct that is "so persistent or widespread as to constitute a custom or usage with the force of law." *Monell*, 436 U.S. at 691.

Here, plaintiffs rely on their own experiences and conclusory allegations of disparate treatment compared to unspecified "other" contractors. That is insufficient as a matter of law. Isolated incidents—particularly those involving a single plaintiff—do not establish a custom or practice. *See*, *e.g*., *DeCarlo v. Fry*, 141 F.3d 56, 61 (2d Cir. 1998). Moreover, plaintiffs' own allegations underscore the absence of any uniform practice. The permitting and enforcement decisions at issue varied depending on project-specific factors, including site conditions, technical requirements, and compliance submissions. (LRS ¶¶ 1-4, 37-41.) Enforcement likewise reflected discretionary, context-dependent determinations regarding which violations warranted action. (LRS ¶¶ 4, 7-9.)

Such variability is the hallmark of discretionary, fact-dependent decision-making. No fixed or widespread municipal custom with the force of law has been identified.

C. PLAINTIFFS CANNOT ESTABLISH LIABILITY BASED ON A FINAL POLICYMAKER

Finally, plaintiffs cannot establish municipal liability by attributing the challenged conduct to a final policymaker.

Whether an official is a final policymaker is a question of state law. See *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). Under Connecticut law, the Building Official is charged with enforcing the State Building Code and determining compliance

in individual cases. Conn. Gen. Stat. § 29-260; Conn. State Building Code § 104. That role entails the application of established standards to particular facts, not the formulation of municipal policy.

Accordingly, even assuming the Building Official exercised discretion in evaluating plaintiffs' applications or requiring additional documentation, such decisions do not constitute municipal policy for purposes of *Monell*. See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (distinguishing between discretionary decisions and policymaking authority).

Nor can plaintiffs rely on the involvement of Town Managers or Council members. Town Council members do not have authority over permitting or enforcement decisions and act, at most, as conduits for constituent complaints rather than directing outcomes. Thus, there is no evidence that any Town official directed or influenced the alleged conduct. (LRS ¶ 7.) As discussed further below, those officials lacked authority over permitting and enforcement decisions and did not make or direct the challenged conduct. Their alleged awareness of, or communication about, plaintiffs' complaints does not transform operational decisions into municipal policy.

Because plaintiffs cannot identify an official policy, establish a widespread custom, or demonstrate action by a final policymaker (and because no underlying constitutional violation exists) their municipal liability claim fails as a matter of law. The pleadings and evidence demonstrate a uniform pattern: where plaintiffs complied with applicable code requirements, permits issued; where they did not, the Town issued a violation and required post-work compliance. Permitting and enforcement decisions were made within the Building Department based on code compliance and project-

specific considerations—not pursuant to direction from Town leadership. (LRS ¶¶ 1-4, 7-8.) In all instances, plaintiffs retained access to the permitting process and ultimately obtained approvals. (LRS ¶¶ 20-30; 31-41.)

This is not a pattern of unconstitutional conduct, but of routine municipal regulation. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Plaintiffs' disagreement with how those rules were applied in particular instances does not transform a consistent, code-driven process into a municipal policy of constitutional violations. Summary judgment should therefore enter in favor of the Town. Municipal liability does not arise from discretionary decisions made in the course of administering established rules.

VI. CLAIMS AGAINST TOWN MANAGERS AND COUNCIL MEMBERS FAIL FOR LACK OF PERSONAL INVOLVEMENT

Assuming plaintiffs *arguendo*, plaintiffs could establish an underlying constitutional violation, which they cannot for the reasons set forth above, their claims against all other individually named defendants fail for the independent reason that plaintiffs cannot establish their personal involvement in any alleged constitutional violation. It is well-settled that liability under 42 U.S.C. § 1983 cannot be premised on a theory of *respondeat superior*. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Instead, a plaintiff must establish that each defendant was personally involved in the alleged deprivation of constitutional rights. *Sealey v. Giltner*, 116 F.3d 47 (1997); *Tangreti v. Bachmann*, 983 F.3d 609 (2020).

Here, plaintiffs' allegations against Town Manager Mark Sciota, Assistant Town Manager Alex Ricciardone, and Town Council members Victoria Triano and Paul Chaplinsky are entirely conclusory and untethered to any specific conduct relating to the

permitting, inspection, or enforcement decisions at issue. The undisputed record reflects that these officials did not make, direct, or control any such decisions. (LRS ¶¶ 5-6.)

Courts have consistently held that such conduct is insufficient as a matter of law. *See Grullon v. City of New Haven*, 720 F.3d 133 (2d Cir. 2013) (receipt or forwarding of complaints does not establish personal involvement); *Hernandez v. Keane*, 341 F.3d 137 (2d Cir. 2003) (general supervisory authority insufficient). Courts have consistently held that such conduct is insufficient as a matter of law.

Importantly, the Connecticut State Building Code vests authority to review applications, determine compliance, and issue permits in the Building Official—not in the Town Manager or elected officials. Conn. State Building Code § 104. The record confirms that permitting, inspection, and enforcement decisions were made by the Building Department in the exercise of that independent authority. (LRS ¶¶ 1-4, 6, 8.)

Plaintiffs identify no instance in which these defendants made a permitting decision, conducted an inspection, issued a violation, or directed any enforcement action. Nor could they, as these officials lack the authority to do so under the governing regulatory framework. Responding to complaints, forwarding concerns, or engaging in general oversight does not give rise to § 1983 liability absent direct participation in the alleged constitutional violation. Plaintiffs cannot transform routine municipal responsiveness into personal involvement. Nor does any alleged failure to act on plaintiffs' complaints regarding other contractors give rise to a constitutional claim.

Accordingly, because plaintiffs cannot establish the personal involvement required under § 1983, summary judgment should enter in favor of these defendants on this independent ground.

VII. PLAINTIFFS' MUNICIPAL ESTOPPEL CLAIM FAILS AS A MATTER OF LAW

Plaintiffs' claim of municipal estoppel fails as a matter of law. To prevail, plaintiffs must demonstrate a clear and definite municipal representation upon which they reasonably relied to their detriment. Under Connecticut law, "[e]stoppel against a municipality is limited and may be invoked only with great caution." *Kimberly-Clark Corp. v. Dubno*, 204 Conn. 137, 146 (1987). To prevail, a plaintiff must show: (1) a clear and definite representation by a municipal official with authority; (2) reasonable reliance on that representation; and (3) substantial detriment. *See West Hartford v. Rechel*, 190 Conn. 114, 121 (1983). Even then, estoppel will not lie where it would interfere with the municipality's exercise of its governmental functions. *Kimberly-Clark*, 204 Conn. at 146.

Plaintiffs' estoppel theory appears to take two forms: 1) that once a permit application was submitted, the Town could not require additional documentation, such as engineered drawings or technical reports; and 2), that the Town was estopped from imposing additional fire safety requirements at plaintiffs' 161 Canal Street property after approving the construction of a garage. Neither theory satisfies the demanding standard for municipal estoppel.

A. NO CLEAR OR DEFINITE MUNICIPAL REPRESENTATION

At the outset, plaintiffs cannot identify any clear representation by the Town that is unambiguous, authorized and not subject to further qualification that commercial vehicle storage would be permitted without compliance with applicable fire and building codes. *See West Hartford v. Rechel, 190 Conn. 114, 121 (1983)*. To the contrary, the governing code provisions expressly require that "an automatic sprinkler system shall be provided throughout buildings used for storage of commercial motor vehicles where

the fire area exceeds 5,000 square feet." IBC § 903.2.10.1. Thus, any representation regarding use was necessarily contingent on compliance with those requirements.

Moreover, the record reflects that the Town's permitting process is inherently conditional and compliance-driven, with applications subject to review, revision, and supplementation as necessary to determine compliance with applicable codes. (LRS ¶¶ 1-4, 10-11.) Such a process, by definition, does not give rise to fixed or unconditional representations.

The nature of the building's permitted use and the conditions attached to that use were not fixed, but were the subject of ongoing discussion tied directly to code compliance. Plaintiffs applied for approval of a "low hazard—equipment storage facility," and their own engineer understood the project on that basis. (LRS ¶¶ 44-46.) Consistent with that representation, the Town expressly advised during plan review that there could be "no parking of commercial motor vehicles." (LRS ¶¶ 45, 50.) Following review, the Town issued a building permit consistent with the represented use—equipment not vehicle storage. (LRS ¶ 47.)

Plaintiffs' own desired use altered that framework. Their testimony establishes that, notwithstanding the "equipment storage" designation, the building was in fact used to store commercial vehicles as a core part of their operations, including a fleet of 20-25 vehicles and associated equipment. (LRS ¶ 48.) The record reflects that the storage of commercial motor vehicles implicates heightened fire safety requirements under the applicable code. (LRS ¶ 49.) The Fire Department reiterated that the building "cannot house service vehicles without a fire sprinkler system." (LRS ¶¶ 49-50; 54-56.) These were not new or inconsistent conditions; they were the direct consequence of plaintiffs'

shift from equipment storage to vehicle storage. Plaintiffs' principal acknowledged this regulatory framework, testifying that proposed limitations on vehicle storage were advanced as a "solution… to get away from the sprinkler systems." (LRS ¶ 53.)

Such testimony confirms that any statements regarding use were conditional, negotiated, and tied directly to regulatory compliance, not fixed municipal approvals. Where, as here, the alleged representation arises from an evolving dialogue regarding code compliance, it cannot serve as the "clear and definite" representation required for estoppel. (LRS ¶¶ 49-58.)

B. Plaintiffs Did Not Reasonably Rely On Any Representation

If plaintiffs could identify a qualifying representation, any reliance would be unreasonable as a matter of law. A party dealing with a municipality is "charged with knowledge of the statutes and regulations governing the municipality's authority." *Kimberly-Clark*, 204 Conn. at 147. Plaintiffs, as commercial actors engaged in construction and sign installation, were necessarily aware that permits, approvals, and inspections are subject to compliance with applicable codes and to the discretion of municipal officials.

Plaintiffs' claimed reliance fails as a matter of law under either theory they advance. First, to the extent plaintiffs contend that the Town was precluded from requiring additional documentation or technical submissions once an application was filed, any such reliance is unreasonable. Plaintiffs were not unsophisticated applicants, but experienced commercial actors, with numerous employees with experience in the field. (LRS ¶¶ 15-17.) The permitting process is inherently iterative and compliance-driven. The Code expressly authorizes the Building Official to require additional

information including engineering analyses or testing where necessary to determine compliance. Conn. State Building Code § 104. Plaintiffs were therefore on notice that the permitting process was iterative and contingent, not fixed or guaranteed. (LRS ¶¶ 2-4, 13.) Plaintiffs are experienced commercial contractors and understood that additional materials, revisions, and code-based requirements are routinely imposed during review. Plaintiffs' own testimony confirms that permitting compliance is a standard and expected component of their business operations. (LRS ¶¶ 15-17.) Mr. Rappoccio testified that Sign Pro budgets for permit procurement, code compliance, and related regulatory requirements as part of its ordinary estimating practices. (LRS ¶¶ 15-17.)

Second, to the extent plaintiffs contend that the Town was estopped from imposing fire safety requirements at 161 Canal Street after initial approval, the record forecloses any claim of reasonable reliance. Governing code provisions expressly required sprinkler protection for buildings used to store commercial motor vehicles above a specified threshold. IBC § 903.2.10.1. Plaintiffs retained a professional engineer, Gary Reola, to prepare and submit technical materials for that project, including submissions addressing the nature and use of the structure. (LRS ¶¶ 49-51.) Plaintiffs were therefore aware that different uses, particularly commercial vehicle storage, implicate distinct code requirements, including fire protection measures. Plaintiffs cannot reasonably rely on approval for one use while simultaneously pursuing and implementing a materially different use. If there could be any reliance, it would be due to miscommunication between plaintiffs and their agent-applicant engineer.

Plaintiffs acknowledged that storing commercial vehicles in the building carried materially different regulatory and safety implications. Mr. Rappoccio testified that,

absent compliance with applicable requirements, storing vehicles in the building would expose the business to "a hundred percent liability" and he engaged in proposed solutions to get around having to install the sprinklers, but ultimately decided on installation. (LRS ¶¶ 53-54, 57-58.) Plaintiffs were expressly advised at multiple stages that commercial vehicle storage was not permitted without compliance with applicable fire protection requirements. (LRS ¶¶ 54-58.) Plaintiffs entertained and evaluated alternatives to the sprinklers in light of those requirements. (LRS ¶¶ 53-54, 57-58.) Under these circumstances, plaintiffs cannot claim reasonable reliance on an assumption that code-based safety requirements would not apply.

These admissions of plaintiffs are dispositive. It establishes that plaintiffs understood that vehicle storage was a distinct use with separate compliance obligations. A party who recognizes that a particular use triggers additional regulatory requirements cannot, as a matter of law, claim reasonable reliance on an alleged approval that disregards those requirements. Plaintiffs' attempts to avoid the installation of the sprinklers are an acknowledgment of regulatory constraints and an effort to minimize their application.

Reliance in the face of such explicit conditions is not reasonable.

1. Plaintiffs' Changing Use of the 161 Canal Street Property Defeats Estoppel

Plaintiffs' estoppel claim fails for the additional reason that the regulatory consequences they challenge arose from their own evolving plans for the property, not inconsistent or misleading conduct by the Town.

Plaintiffs applied for approval of an equipment storage facility. (LRS ¶¶ 44-46.) Plaintiffs' own testimony establishes that the building was in fact used to store

commercial vehicles as a core function of their operations. (LRS ¶ 48.) The Town reviewed and approved the project on that basis, while expressly advising that commercial vehicle storage was not permitted. (LRS ¶¶ 45, 47, 52.) As the project progressed and plaintiffs pursued vehicle storage, the Town required compliance with applicable fire safety requirements, including sprinkler protection. (LRS ¶ 49.) Once those requirements were satisfied, the Town issued a certificate of occupancy permitting commercial vehicle storage. (LRS ¶ 53.)

This course of conduct reflects routine code enforcement, not municipal inconsistency and is fatal to estoppel. Any approval obtained was necessarily tied to the use as presented at the time. When plaintiffs altered that use, additional code requirements were triggered. Connecticut law does not permit a party to invoke estoppel based on consequences flowing from its own change in position. *See Breen v. Phelps*, 186 Conn. 86, 95 (1982). Here, plaintiffs cannot transform the regulatory consequences of their own decisions into a claim of municipal misconduct.

2. No Detrimental Reliance

Plaintiffs also fail to demonstrate that any alleged reliance resulted in a substantial detriment attributable to a municipal representation. Any costs incurred in preparing applications, submitting materials, or pursuing projects are ordinary incidents of engaging in regulated construction activity. Such expenditures do not constitute the type of extraordinary detriment required to invoke estoppel against a municipality. The record further confirms that plaintiffs cannot identify any measurable economic harm caused by the Town's permitting or enforcement practices; their claimed damages are speculative and unsupported. (LRS ¶ 19.)

With respect to the 161 Canal property, plaintiffs made deliberate business decisions in response to known regulatory requirements—including ultimately installing a sprinkler system to facilitate their desired use. (LRS ¶ 58.) Critically, plaintiffs achieved the very use they claim was denied: the final certificate of occupancy expressly authorized commercial vehicle storage upon compliance with applicable fire protection requirements. *Id*. Thus, plaintiffs were not deprived of the use of the property—they were required only to comply with the conditions necessary to lawfully obtain it.

Under these circumstances, there is no cognizable detriment. At most, plaintiffs incurred compliance costs associated with meeting applicable safety requirements. Such costs do not constitute the type of substantial, inequitable loss required to sustain a claim of municipal estoppel. Nor can plaintiffs obtain a windfall by seeking to avoid the very regulatory requirements that permitted their desired use.

3. Estoppel is Particularly Inappropriate Where It Would Interfere with Code Enforcement

Both of plaintiffs' theories ultimately seek to prevent the Town from exercising its statutory authority to ensure compliance with building and fire safety codes. That is precisely the circumstance in which estoppel is unavailable.

Connecticut courts have repeatedly held that estoppel cannot be used to interfere with a municipality's enforcement of laws enacted to protect public safety. *Kimberly-Clark*, 204 Conn. at 146. The requirements at issue here including requests for engineering documentation and the imposition of sprinkler requirements are core components of that regulatory function. (LRS ¶¶ 3-4, 54-56.)

Additionally, plaintiffs' own conduct independently precludes estoppel. Plaintiffs performed work without permits and refused to provide access necessary for inspection

in connection with other projects, demonstrating resistance to, rather than reliance on, the Town's regulatory process. (LRS ¶¶ 24-30; 32-36.) A party cannot invoke estoppel to avoid compliance with requirements it actively resisted.

Finally, the record reflects that the Building Department operated under ordinary administrative constraints, including backlog and volume of applications, further confirming that the Town's actions reflect routine municipal operations rather than targeted or misleading conduct. (LRS ¶ 4.)

Accordingly, because plaintiffs cannot establish a clear municipal representation, reasonable reliance, or any basis to preclude the Town's enforcement of applicable code requirements, their municipal estoppel claim fails as a matter of law.

VIII. ALL INDIVIDUAL DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY

Assuming plaintiffs can establish a constitutional violation, the individual defendants are entitled to qualified immunity. Qualified immunity shields government officials from civil liability where "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The doctrine protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Courts may address either prong of the analysis first: (1) whether a constitutional right was violated, and (2) whether that right was clearly established at the time of the challenged conduct. *Pearson*, 555 U.S. at 236.

As set forth above, plaintiffs cannot establish a violation of substantive due process or equal protection. The challenged conduct consists of routine permitting, inspection, and enforcement decisions undertaken pursuant to the Connecticut State

Building Code and local regulations. The Building Official evaluated applications, required additional documentation where necessary, imposed code-based safety requirements, and issued approvals upon compliance. (LRS ¶¶ 1-4, 14, 37-41.) Where plaintiffs failed to comply with permitting requirements, the Town issued violations and required corrective action, including in connection with the M&T Bank project. (LRS ¶¶ 24-30; 32-36.)

With respect to 161 Canal Street, the Town conditioned approval on compliance with fire safety requirements applicable to the intended use, including sprinkler requirements for commercial vehicle storage, and ultimately approved that use upon compliance. (LRS ¶¶ 49-58.)

Such conduct falls squarely within the discretionary authority of municipal officials and does not rise to the level of a constitutional violation. Because no constitutional violation occurred, the individual defendants are entitled to qualified immunity on that basis alone.

Even assuming arguendo that plaintiffs could establish a constitutional violation, they cannot demonstrate that any such right was clearly established. A right is "clearly established" only where existing precedent has placed the constitutional question "beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The inquiry must be undertaken in light of the specific context of the case, not at a high level of generality. *Id*.

Here, plaintiffs identify no authority, let alone clearly established law—holding that municipal officials violate the Constitution by: requiring additional engineering or technical documentation to establish code compliance; imposing fire safety

requirements based on the intended use of a structure; evaluating permit applications on a case-by-case basis, or responding to complaints regarding code enforcement or alleged disparities.

The actions challenged here reflect a cautious and safety-driven approach to code enforcement—the very approach the law encourages. Building officials are tasked with protecting public welfare and requiring additional safeguards or documentation where warranted is not only permissible, but prudent. Plaintiffs' position seeks to impose liability for such diligence, while at the same time faulting the Town for allegedly failing to enforce regulations against others. The Constitution does not demand this contradictory result, nor does it punish officials for erring on the side of safety.

To the contrary, courts have consistently recognized that such actions are part of the ordinary, discretionary functions of local government that do not give rise to constitutional liability. *See Zahra v. Town of Southold*, 48 F.3d 674, 680-82 (2d Cir. 1995) (rejecting due process claim arising from building permit and inspection disputes and emphasizing that federal courts do not sit as "zoning boards of appeal"); *RRI Realty Corp. v. Village of Southampton*, 870 F.2d 911, 918-19 (2d Cir. 1989) (no protected interest where officials retain discretion); *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d 494, 503 (2d Cir. 2001) (even allegedly arbitrary land-use decisions do not constitute constitutional violations). These cases reflect a fundamental principle: local officials are entrusted to exercise judgment in applying building and zoning regulations to the unique facts of each project. That discretion necessarily permits variation in how requirements are imposed, including when officials determine that additional safeguards, documentation, or scrutiny are warranted in a particular case.

To the extent plaintiffs' claims are premised on alleged failures to enforce code requirements against other contractors, they fail as a matter of law. The Second Circuit has squarely held that there is no constitutional right to the enforcement of zoning or building laws against others. *See Gagliardi v. Village of Pawling*, 18 F.3d 188, 192-93 (2d Cir. 1994) (rejecting equal protection claim based on selective non-enforcement and holding that plaintiffs have no right to compel enforcement against third parties).

Enforcement decisions are inherently discretionary and depend on case-specific considerations, including available information, resource allocation, and safety concerns. *Id*. These determinations also reflect complaint-driven processes and ordinary administrative constraints, including backlog and volume of applications. (LRS ¶¶ 4, 6-9.) Accordingly, plaintiffs cannot sustain a claim based on the Town's alleged failure to act against others while simultaneously challenging the Town's enforcement of applicable requirements as to their own projects. At most, plaintiffs' claims reflect disagreement with how government functions were carried out, not a violation of clearly established constitutional rights.

Qualified immunity independently applies where it was objectively reasonable for the defendants to believe their conduct was lawful. The undisputed record demonstrates that the individual defendants acted pursuant to their statutory and regulatory authority.

The Building Official applied the Connecticut State Building Code to evaluate compliance, required documentation where necessary, and imposed safety requirements tied to the intended use of structures. (LRS ¶¶ 1-4, 49-58.) Other individual defendants did not make or direct permitting or enforcement decisions at all. (LRS ¶ 6.)

At a minimum, it was objectively reasonable for the individual defendants to believe that such conduct complied with applicable law. Nothing in the record suggests that any defendant acted in a manner that was plainly incompetent or knowingly unlawful.

IX. CONCLUSION

For the foregoing reasons, plaintiffs' claims fail as a matter of law. Plaintiffs cannot establish any constitutional violation or viable state-law claim. Defendants respectfully request that the Court grant summary judgment in their favor in its entirety.

DEFENDANTS,
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