

# MACKEY BUTTS & WHALEN LLP

ATTORNEYS AT LAW

Ellen L. Baker  
Robert R. Butts  
Robert B. Dietz  
Richard R. DuVall  
Ian S. MacDonald  
Joshua E. Mackey  
Cara A. Whalen

Christina A. Mazzarella  
Alexander D. Salvato

Emily Abrahams  
Tyrone Brown  
Richard J. Olson  
R. Keith Salisbury

Hon. Albert M. Rosenblatt

September 17, 2024

Via Email: [landuse@salisburyct.us](mailto:landuse@salisburyct.us)

Dr. Michael Klemens  
Chairman – P&Z Commission  
Town of Salisbury  
PO Box 548  
27 Main Street  
Salisbury, CT 06068

**Re.: Wake Robin Inn – 104-106 Sharon Road, Lakeville CT  
(Special Permit Application #2024-0257)**

Dear Dr. Klemens and members of the Planning and Zoning Commission:

We represent ARADEV LLC, the applicant in the Special Permit application referenced above.

The purpose of this correspondence is to respond to the September 13, 2024 correspondence from Perley Grimes, Jr., Esq on behalf of his clients, Mr. and Mrs. William Cruger.

The subject of Mr. Grimes' correspondence is focused upon the existing non-conforming nature of 104-106 Sharon Road. The cases cited by Mr. Grimes addressed situations where residential property owners applied for *variances* to allow modification to properties which, if granted, would increase the non-conformity of those lots. For the following reasons, Mr. Grimes' arguments are moot and inapplicable to the application before the Commission.

First, the application is for Special Permit under Section 213.5 of the Town of Salisbury Zoning Regulations, not a variance. In considering applications for Special Permits, the Commission has broad discretion in deciding whether an application meets the required standards. "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." *Santarsiero v. Planning and Zoning Commission of the Town of Monroe, 165 Conn. App. 761 (2016)*.

It is assumed that the Commission has determined the instant application fits within the criteria of Section 213.5 and will require certain conditions for approval that will mitigate any actual or perceived expansion of non-

Reply to:

3208 Franklin Avenue  
Millbrook, NY 12545  
P 845.677.6700  
F 845.677.2202

319 Mill Street  
Poughkeepsie, NY 12601  
P 845.452.4000  
F 845.454.4966

81 Main Street  
P.O. Box 308  
Sharon, CT 06069  
P 860.364.6232  
F 860.364.6429

[www.mbwlawyers.com](http://www.mbwlawyers.com)

conformity. The discussion of variances as suggested by Mr. Grimes is inapplicable.

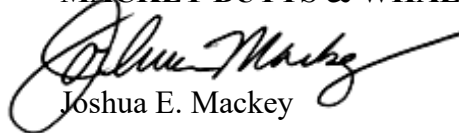
Second, it is acknowledged that Section 503 places limits on the modifications that may be made to non-conforming buildings. Pursuant to Section 503.2, no non-conforming building or structure may be modified *“in any way that increases the area or space, including vertical enlargement, of that portion of the building or structure that is non-conforming.”* The non-conforming portion of the building at issue is the height. Accordingly, the design of the extension has been reworked to comply with the Zoning Regulations for the maximum building height for a principal building (Section 309.2). Under this Section, the building height may be a maximum of 35’ measured from the average grade plane to the mid-point of the roof if a gable, gambrel, or hip.

As per the current grading plan, the average grade plane of the principal building is 841.3. The average grade plane was developed by taking the grade elevation every 5’-0” around the perimeter. The roofs of the addition have been modified to be gambrel roofs. Height is measured from the average grade plane to the mid-point of these roofs (between eave and peak). The height of the addition is therefore 28’ and the height of the mechanical/elevator overrun is 31.48’.

Given that the new design calls for heights within 35’ there is clearly no expansion of non-conformity. Plans for the new design were submitted under separate cover on September 16, 2024 and added to the public record today.

Sincerely,

**MACKEY BUTTS & WHALEN, LLP**

A handwritten signature in black ink, appearing to read "Joshua Mackey", written over a white background.

Joshua E. Mackey

cc. ARADEV LLC