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Hon. Albert M. Rosenblatt

December 6, 2024

VIA EMAIL: candres@barclaydamon.com
Town of Salisbury Planning & Zoning Commission
c/o Charles R. Andres, Esq.
Barclay Damon LLP
545 Long Wharf Drive - 9th Floor
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RE: Aradev, LLC Special Permit Application for 104 & 106 Sharon Road & 53 Wells Hill Road – Map 47 – Lot 2 & 2-1

Dear Mr. Andres:

We submit this letter brief in response to your question at the December 2, 2024 Planning and Zoning Commission ("Commission") meeting as to whether Conn. Gen. Stat. §8-2 (d) (10) as amended by Public Act 21-29 prohibits the Commission from considering "community character" in its review of this application. The Intervenors have raised a number of arguments under the cloak of their petition which are not environmentally related. The common thread in all of the Intervenors' arguments however is that the proposed hotel expansion is inconsistent with the character of the community.

Conn. Gen. Stat Section 8-2 (d) (10) as amended specifically prohibits a zoning body from denying an application based upon community character unless standards are established in the applicable zoning regulations which define "community character." The amended Conn Gen. Stat 8-2 (d) (10) provides as follows:

> "Zoning regulations…shall not…be applied to deny any land use application including for any site plan approval, special permit, special exception or other zoning approval, on the basis of…a district's character, unless such character is expressly articulated in such regulations by clear and explicit standards for site work and structures…"

In the instant matter, while §802 and §803 of the Town of Salisbury Zoning Regulations permit the Commission to assess the "relationship" of

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any proposed building "to the topographical and other natural features of the land" there is no *expressly articulated* wording describing what exactly is the "community character" being protected. There is mention of environmental review being required and a statement that "proposed uses shall not unreasonably adversely affect the enjoyment, usefulness and value of properties in the general vicinity" (§803.3) but conspicuously absent from the regulations is any definition of community character. "*Expressly articulated*" means just that and not vague references to the Commissions scope of review. Architectural standards or defined allowable uses are examples of the "*expressly articulated*" community character standards and wording like this is simply absent from the regulations.

We take no issue with the notion that the Intervenors can raise concerns surrounding things such as noise and environmental impacts. As we heard your question, it was specific to whether the Commission could consider arguments by the Intervenors (as well as certain members of the public) that the proposed hotel expansion does not fit within the character of the community. First and foremost, assuming community character concerns were a legitimate factor for the Commission to consider, this argument is entirely without merit if for no other reason than the fact that there is an existing hotel operation at the subject property – The Wake Robin Inn.[1]

The cases cited by the Intervenors do not exactly address your question of whether the Commission can consider community character. In fact, these cases reinforce the conclusion that the Commission cannot do so, at least to the degree that the Intervenors would like. In 131 Beach Road, LLC v. Town Plan and Zoning Commission of Town of Fairfield, 349 Conn. 647 (2024), the court was dealing with a specific regulation which *expressly articulated* physical and historical factors. In the regulations at hand there are no *expressly articulated* physical and historical factors. The court in that case reiterated the language of Conn. Gen. Stat. 8-2 (d) (10) and stated the purpose of that section was "to askew the vague and highly subjective evaluation entailed in considering a districts character." This is consistent with our position. The inappropriate and highly subjective statements by the Intervenors and some members of the public that this hotel expansion project does not fit in with community character must be disregarded. A glaring example of this is found in the December 4, 2024 correspondence from Lee Potter, Chairperson, Town of Salisbury Conservation Commission wherein she bloviates:

> "There are three reasons I do not like the plans for this central parcel of the town of Salisbury. A development like this does not reflect the quiet, nature-loving, low-key culture of the Salisbury community, thus it won't be used by our community members. It destroys important ecological habitats. The modern and inexpensive design of the

[1] The Wake Robin is far from being "inactive" as was mentioned by the Intervenors and their "experts." In 2024, the Wake Robin hosted 3,000 guest lodging nights during its current peak-season strategy, with almost all guests arriving from outside the area. This represented a 10% occupancy increase from 2023, when the property hosted 2,700. Each year, the property has seen steady increase in lodging, with guests utilizing up to 38 private rooms in two separate buildings (not 26, as claimed by the Intervenors). The Wake Robin has operated with no lodged noise or other complaints from neighbors, including when it has hosted outdoor, tented weddings for up to 200 guests.

architecture for the added hotel rooms is so contrary to the vernacular of our New England town, it will become the bane of Salisbury."

The record is filled with similar comments which clearly must be disregarded in accordance with Conn. Gen. Stat 8-2 (d) (10) and 131 Beach Road.

Likewise, in the second case cited by the Intervenors, 3 Lake Avenue, Extension LLC v. City of Danbury Zoning Commission 2023 WL8432625, No. DBD-CV 22-604-1619-S (Conn. Super. Ct. Dec. 1, 2023), the court dealt with an application for a homeless shelter. During public hearings in that case, opinions were shared by members of the public and commission members that the homeless shelter would negatively impact community character. The court never stated that those opinions were a valid consideration for the commission involved. The court simply held that there was no violation of Conn. Gen. Stat. 8-2 (d) (10) because evidence showed that the comments about community character were not the basis of denying that application. Here, so long as the Commission does not afford weight to comments from the Intervenors and members of the public like those of Ms. Potter, they will be in compliance with Conn. Gen. Stat. 8-2 (d) (10).

Finally, we are aghast at the Intervenors' closing statement in its December 5, 2024 correspondence to you wherein they allege: "no allegations of racial segregation have been raised in the present matter." We note that the Intervenors failed to mention "religious segregation" because they well know of the campaign begun by certain members of the public to characterize our clients as having a religious use in mind for the property and not actually what has been presented. While there is no intention of religious purpose by our clients, the mere allegations by opponents should reveal to the Commission just how far they are willing to go in opposing this application. We are sure that the Commission is aware that even if a religious purpose was intended, which is not the case, under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.* ("RLUIPA") the comments from members of the public on this topic, like those related to "community character," must be disregarded and curtailed. See Chabad Lubavitch of Litchfield County, Inc., v. Litchfield Historic Commission 934 F.3d 238 (2d Cir. 2024).

Very truly yours,
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Joshua E. Mackey

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