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From: Abby Conroy, Land Use Director & Michael Klemens, Chair on behalf of the Salisbury Planning & Zoning Commission

Date: December 10, 2024

Re: [#2024-0257 / Wake Robin LLC & Ms. Serena Granbery \(ARADEV LLC\) / 104 & 106 Sharon Road & 53 Wells Hill Road / Special Permit For Hotel \(Section 213.5\) / Map 47/ Lot 2 & 2-1 / DOR: 08/05/2024 /](#) and Amendments to the Salisbury Zoning Regulations – Hotels (Effective May 20, 2024).

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There have been several allegations made against the Planning & Zoning Commission, its members and staff alleging that the Commission acted inappropriately in adopting a regulation amendment. These allegations assert that the amendment was for the sole purpose of facilitating the now pending application by ARADEV LLC and that the amendments were carried out in an attempt to circumvent public participation in process.

### **Pre-application Process**

The staff memo dated October 15, 2024 cites and explains Connecticut General Statutes (CGS) §7-159b which allows for a pre-application review. As has been emphasized by the Commission, Connecticut law requires that in executing land use responsibilities under the Statute, applications and requests must be evaluated on the merits of the use, not the user. This preapplication option is available to *any* prospective applicant. Per (CGS) §7-159b “Such preapplication review and any results or information obtained from it may not be appealed under any provision of the general statutes, and shall not be binding on the applicant or any authority, commission, department, agency or other official having jurisdiction to review the proposed project.”

### **Need for Regulatory Changes**

As explained in the memo dated October 15, 2024. The Commission has had numerous discussions regarding inconsistencies, contradictions, and outdated language in the Zoning Regulations. There have been several attempts to update the Regulations in a piecemeal fashion only to subsequently encounter challenges posed by language being intertwined in multiple sections of the Regulations. Land Use Office staff and the PZC Chair have recommended a comprehensive Zoning rewrite subsequent to the adoption of the 2024 Plan of Conservation and Development which is in process.

Since 2020 (even before) short term rentals (STR) have been a topic of discussion not just in Salisbury but across the State. The case law and legislation surrounding STRs are evolving. Depending on where you live, STRs can be considered a protected residential use or regulated as a commercial/hotel use.

In 2022, STRs were discussed in response to citizen complaints as well as to an application for a property known as 9 Academy Street. During that time, the Commission explored how STRs impact the use and enjoyment of residential properties, other hospitality businesses, and the cost of housing (see the [2023 Salisbury Affordable Housing Plan](#) for more discussion on affordability). Ultimately, the PZC recommended that the Board of Selectmen consider an ordinance to regulate STRs. The project at 9

Academy, although originally represented as a multifamily STR was permitted by the PZC as a hotel in a commercial zone. The definition of hotel (and motel) was discussed during that process as for example the definition at that time required that access and egress be controlled from a central point. Part of this confusion was amplified by overlapping definitions of hotel versus motel (for instance a motel was also considered a tourist cabin).

There had been numerous inquiries related to prospective event venue uses on properties across Town. Event venues are currently not permitted as a principal use in any zone, but like restaurants are customary and incidental uses of hotels/motels. There have also been two special permit applications (Lime Rock Park in 2023 and 119 & 121 Long Pond Road in 2022) which directly involved the discussion of event venues. Both applications were withdrawn.

The revised definitions of hotel and motel codify ancillary uses including venue. In turn clarifying that venues are only allowed as an accessory use to hotels and motels. Such a regulation would seemingly prohibit venue use as an accessory or principal use on any parcel not containing a principal hotel/motel use. Currently, the Land Use Office is in receipt of *preapplication* requests by Attorney Grimes' colleague at Cramer & Anderson who is specifically seeking a Regulation amendment which would allow venues as a principal use in residential zones.

The table of parking requirements has also been a reoccurring topic of discussion. The existing requirements especially for properties with multiple programming is impractically based on gross floor area rather than net floor area. It acts as a regulatory hoop to jump through rather than serving as a functional tool to establish a desired development outcome. Detailed discussion of parking Regulations was had in 2021 when 9 & 9A Sharon Road (Fern Restaurant) sought a special permit for parking flexibility and again in 2023 when 14 Main Street also applied for a special permit for parking flexibility.

Finally, it appears that at some point, the LA zone was dropped from the use tables. A review of old Regulations showed that this was seemingly a formatting error. The revision to the "Motel" definition eliminated reference to "Tourist Cabin" a term with the same definition but appearing only in the LA zone. Accordingly, the term was removed from the Zoning text and use tables. The erroneously dropped column from the use tables was reintroduced.

### **Rationale/Process for Zoning Amendments**

As explained in the memo dated October 15, 2024. Since 2020, there have been four Zoning Regulation amendments, as well as a comprehensive zoning map update. These text amendments have been undertaken to either address required State legislative changes or to respond to land use challenges that have broad applicability within the Town. Each of these actions has conformed with the statutory notice requirements including referral to the Regional Council of Governments (NHCOG), notice of public hearing and notice of decision (both published in the newspaper). The PZC has broad discretion to enact or amend its Regulations. In these instances, the PZC is acting legislatively (*Parks v. Planning & Zoning Commission*, 178 Conn. 657 (1979)). The PZC may modify its Regulations whenever time, experience and responsible planning for contemporary or future conditions reasonably indicate the need for a change.

As was articulated by Attorney Grimes, there are hundreds of procedural steps that a Commission and staff must execute in order to adopt Regulations appropriately. Exercising their right under Section 911

of the Zoning Regulations, ARADEV LLC petitioned for a change to the Regulations by drafting an amendment specifically tailored to benefit the Wake Robin Inn property. The PZC has nothing to gain from pursuing the complex process of adopting Regulations on behalf of any individual interest. It is only logical that if the Town has to go through all of the procedural hoops of an amendment, it should be broadly applicable. Which is why, when approached by ARADEV LLC (and the Congregational Church before it, see below) with draft amendments to facilitate *their* private interests, staff and the Chair felt this was not an acceptable solution. Contemplating the long history of confusion and resultant problems concerning transient lodging related uses, the PZC staff and Chair recognized that this request for a Zoning amendment created an opportunity to amend the Zoning Regulations for the benefit of the greater community. It was in the *Town's* interest to amend transient lodging Regulations in a manner that addressed long standing deficiencies.

### **Past Practice**

In early 2023, the Chair and staff also held preapplication meetings with representatives of the Salisbury Congregational Church who sought to install an EV charger. Like ARADEV LLC, the contractor for the Church submitted draft Regulation language to the Town. Similarly, the Chair and staff used that request as starting point, ultimately proposing the Town's own language which addressed publicly accessible EV chargers throughout Town. The Regulation amendments in both cases did not provide a blanket approval. Instead, the Church and ARADEV LLC were required to file formal applications for consideration under newly adopted Regulations.