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December 5, 2024

**VIA E-MAIL: [candres@barclaydamon.com](mailto:candres@barclaydamon.com)**

Salisbury Planning & Zoning Commission  
c/o Charles R. Andres, Esq.  
Barclay Damon, LLP  
545 Long Wharf Drive, Ninth Floor  
New Haven, CT 06511

**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.**

**MEMORANDUM OF LAW ON IMPLICATIONS OF CONN. GEN. STAT. §8-2(d)(10)  
AS AMENDED BY PUBLIC ACT 21-29.**

Dear Attorney Andres:

This is Mr. and Mrs. William Cruger's, Memorandum of Law in response to your request that the Applicant and Intervenor brief the implications of Conn. Gen. Stat. §8-2(d)(10) as amended by Public Act 21-29 on the above-referenced special exception application. As set forth more fully herein, the Intervenors maintain that Conn. Gen. Stat. §8-2(d)(10) does not prevent the Salisbury Planning & Zoning Commission ("Commission") from considering the multiple arguments raised by the Intervenors, including but not limited to the decrease in surrounding property values, noise considerations, environmental impacts, and non-conformity with the Plan of Conservation and Development.



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As you are aware, Public Act 21-29 amended Conn. Gen. Stat. §8-2(d)(10) as of

October 1, 2021 to provide as follows:

Zoning regulations...shall not...(10) 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) a district's character, unless such character is expressly articulated in such regulations by clear and explicit physical standards for site work and structures...

In 131 Beach Road, LLC v. Town Plan and Zoning Comm'n of Town of Fairfield, 349

Conn. 647 (2024), the Supreme Court explains in dictum the rationale behind the amendments to Conn. Gen. Stat. §8-2 made by P.A. 21-29, stating:

It is noteworthy that P.A. 21-29 also deleted the statutory language, previously contained in §8-2(b)(3), requiring a commission enacting zoning regulations to consider the 'character' of the district and substituted in its place a requirement to consider the 'physical site characteristics of the district.' P.A. 21-29, §4. Taken together, these amendments demonstrate an intent to focus a commission's consideration on the specific physical or historical factors implicated by the regulation at issue and to eschew the vague and highly subjective evaluation entailed in considering a district's 'character.'

Id. at 663 n.7. The foregoing interpretation is buttressed by the legislative history of P.A. 21-29. See Conn. Joint Standing Comm. Hearings, Planning and Dev., Pt. 4, 2021 Sess., p. 3233, 3571 ("All reasonable aspects of 'character' are fully covered by other sections of § 8-2, including considerations of historic preservation, environmental impact, density, scale, location, and the suitability of uses."); Conn. Joint Standing



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Comm. Hearings, Planning and Dev., Pt. 4, 2021 Sess., p. 3204 (“There was consensus that the word ‘character,’ has historical racially segregating context in the state. The language that replaced ‘character’ still allows the town to ensure aesthetic conformity within development, including preservation of historical characteristics, without referring to this as preserving, ‘character.’”); Conn. Joint Standing Comm. Hearings, Planning and Dev., Pt. 3, 2021 Sess., p. 1768 (“[D]ensity, scale, location, environmental impact, historic preservation, those are all maintained under [Conn. Gen. Stat. § 8-2].”).

In accordance with the legislative history, the Superior Court has twice had the opportunity to further affirm the notion that the purpose of Public Act 21-29 was to clarify the permissible considerations of the zoning commission under Conn. Gen. Stat. §8-2, not eliminate any previously permitted considerations, and rid the statute of a possibly racially segregating consideration. In 3 Lake Avenue Extension, LLC v. City of Danbury Zoning Comm’n, 2023 WL 8432625, No. DBD-CV22-6041619-S (Conn. Super. Ct. Dec. 1, 2023), the plaintiff appealed a decision of the City of Danbury Zoning Commission to deny an application to amend the zoning regulation to permit a homeless or transitional shelter in a district that did not permit homeless or transitional shelters. On appeal to the Superior Court, the plaintiff argued that the defendant-commission improperly considered the “character of the neighborhood” in violation of Conn. Gen. Stat. §8-2(d)(10), as amended by P.A. 21-29. The Superior Court disagreed, stating:



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This claim is based solely on some comments by commission members during deliberations about perception and is not based upon any particular reason to deny the application. The Commission in its decision was concerned with the intensity of the use and adverse impacts as testified to during the hearing by numerous neighbors and business people.

Id. at \*18. Like in 3 Lake Avenue Extension, LLC, the arguments advanced by the Intervenor are concerned with the intensity and adverse impacts of the proposed Wake Robin Inn expansion. As articulated by the Superior Court, these are permissible considerations of the Commission and do not constitute the impermissible consideration of the “character” of the neighborhood.

Similarly, in Blue Camp CT, LLC v. Town of Preston Planning & Zoning Comm’n, 2024 WL 2013528, No. KNL-CV22-6057321-S (Conn. Super. Ct. May 2, 2024), the Superior Court reviewed the decision of the defendant-commission denying a special exception application for a 304-unit recreational vehicle campground and glamping site. On appeal, the plaintiffs argued, inter alia, that Conn. Gen. Stat. §8-2, as amended by P.A. 21-29 no longer permitted the commission to consider the impact of a special exception application on surrounding property values. Id. at \*4, n. 1. The court disagreed, stating, “The court does not agree with the plaintiff’s position that Public Act 21-29 no longer permits the Commission to consider property values. The plain language of General Statutes §8-2(a)(3) states otherwise.” Id. This case instructs that



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the Commission's consideration of surrounding property values is not an impermissible consideration of the "character" of the neighborhood.

As set forth in the legislative history and interpreted by the courts, the amendments to Conn. Gen. Stat. §8-2(d)(10) made by Public Act 21-29 were intended to clarify an otherwise ambiguous term to ensure that racial segregation was not a consideration of planning & zoning commissions in denying special permit applications. The amendments did nothing to change or modify the considerations of the Commission as articulated in Conn. Gen. Stat. §8-2 or Section 803 of the Town of Salisbury Zoning Regulations. Specifically, the Commission is still entitled to consider the harmonization with the terrain, use, scale, and siting of existing buildings in the vicinity of the site; the level of nuisance the proposed use would create to neighboring properties by virtue of noise, air, water pollution, offensive odors, dust, smoke, vibrations, lighting, or other effects (Regulation §803.2); the unreasonable adverse effects on the enjoyment, usefulness, and value of properties in the general vicinity thereof; and the undue concentration of population or structures (Regulation §803.3).

No allegations of racial segregation have been raised in the present matter. Rather, the Intervenor's have set forth several permissible considerations the Commission may take into account when deciding whether to grant the subject special permit application.



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If you or any member of the Commission have any questions regarding this memorandum, please do not hesitate to contact me.

Dated the 5<sup>th</sup> day of December, 2023 at Litchfield, Connecticut.

Respectfully Submitted,

Intervenors, Angela Cruger &  
William Cruger

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