

**TOWN OF SALISBURY
PLANNING AND ZONING COMMISSION**

**Re: Special Permit #2021-0123 for a
12-Unit Multifamily Housing in PKSQ
and APA – Salisbury Housing Committee
11 Holley Street**

March 18, 2021

**INTERVENORS' STATEMENT OF OPPOSITION
TO THE SPECIAL PERMIT APPLICATION**

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I. Introduction and History of the Lakeville Historic District and Bicentennial Park.

At the initial public hearing session on March 8, 2021, the Salisbury Planning and Zoning Commission ("Commission") granted the petitioners' request for intervenor status pursuant to C.G.S. § 22a-19.¹ Intervenors submit the following statement and accompanying materials in opposition to the above special permit application.

The applicant, Salisbury Housing Committee, Inc. ("Applicant"), proposes the construction of a 12-unit, 15,300 square foot modern apartment building on the site of Bicentennial Park, to be known as "Holley Place." Bicentennial Park is less than one-third acre in size and is located in the Lakeville National Register Historic District (the "District").

The District is located in the center of Lakeville in the town of Salisbury (the "Town") near the intersection of U.S. Route 44/Millerton Road and State Route 41/Sharon Road. The District was approved by the National Park Service for listing on the National Register of Historic Places as a Historic District on August 1, 1996. Filed today with the Commission is a copy of the "National Register of Historic Places Registration Form" for the District (the "National Register Registration"), which provides detailed information demonstrating the unique and rich historical character of the District, including Bicentennial Park. Although the National Register Registration was submitted over two decades ago, the invaluable and irreplaceable role the District has served in the Town for two centuries remains vital today.

¹ The Commission granted intervenor status based on Intervenors' Verified Petition for Intervenor Status dated March 4, 2021.

The National Register Registration describes the District and Bicentennial Park as follows:

The [District] contains a mixture of industrial, commercial, and residential architecture dating from the 1750s through the 1930s. It is surrounded by a much larger area containing many additional historic industrial, commercial, residential, religious, and recreational sites and structures.

The [District] comprises an area of approximately 10 acres generally delineated by Millerton Road, Holley Street, Allen Street, and Sharon Road. This street grid remains virtually unchanged from the late nineteenth century. The boundary of the [District] was defined so as to include contiguous historic buildings and sites within the village center and generally follows property lines. The [District] incorporates the structures included within the local historic district originally created in 1970, as well as certain additional contiguous sites.

The [District] contains 25 properties—22 buildings and 3 sites—of which 22 properties [(19 buildings and 3 sites)] contribute to its architectural and historical significance. . . .

The [District] also contains two parks, Furnace Park . . . and Bicentennial Park . . . an area formerly occupied by a variety of commercial buildings, most recently the c. 1895 Holley Block, the most important such structure in turn-of-the-century Lakeville.

National Register Registration, pp. 2–3 (emphasis added) (copy attached at Tab A).

The National Register Registration describes Bicentennial Park as a “small rectangular park across from Holley-Williams House, former site of Holley Block Commercial building, razed 1967. Park is bounded by remaining foundations of Holley Block.” *Id.* at p. 7 (emphasis added).

The history of Bicentennial Park began with an anonymous donor’s gift to the Town toward the purchase and demolition of Holley Block. See Vote Is Unanimous To Demolish Holley Block, Lakeville J., Jan. 4, 1968, at 1 (copy attached at Tab B). The donor specifically conditioned the gift so that the site would be “cleared, graded and landscaped for a Town park or an attractively landscaped parking area, maintained in a neat and attractive fashion” *Id.* (emphasis added). The park was developed as a

key piece of a “master plan” by S. Norton Miner where “the Holley Park, the Hose House Green, Cannon Park and the Community Field would provide a continuous swath of green in Lakeville.” Voters Assure The Construction Of A Park On Holley Block Site, Lakeville J., July 25, 1968, at 1 (copy attached at Tab C).

In or about 1968, the Town built a small vest pocket park on the site. Plans Drawn For Proposed Holley Block Park, Lakeville J., May 30, 1968, at 1 (discussing the actual plans to award a contract to build a park at the site by partially removing the preexisting foundation walls) (copy attached at Tab D); Salisbury Parks: Eleven Green Gifts, Lakeville J., July 17, 1969, at 13 (describing the park as a “small ‘vest pocket park.’”) (copy attached at Tab E).

Bicentennial Park was originally referred to as “Furnace Village Park.” Id. The Lakeville Journal described Furnace Village Park as a small “vest pocket park” developed within the foundations of the old Holley Block. Id. The park received its new name in 1975 following the recommendation of the Town’s Bicentennial Committee to commemorate our nation’s 200th anniversary. ‘Parklet’ Gets A New Name, Lakeville J., Oct. 9, 1975, at A9 (copy attached at Tab F). The 1975 Lakeville Journal article noted that Bicentennial Park contained “tree and shrub plantings and some benches.” Id.

Former First Selectman William Bartlett, in an article published in connection with Salisbury’s Bicentennial Celebration, wrote: “It was with mixed emotions that I, as first selectman of a quarter century, supervised the demolition of [Holley Block building] but was pleased to see the fine end results designed by S. Norton Miner and was gratified at the thought of how much this garden-like improvement will add to the life of the town.” W. Bartlett, Salisbury’s Bicentennial Park (copy attached at Tab G).

In 1983, James Haynes, President of the Salisbury Chamber of Commerce, suggested adding a parking area within Bicentennial Park. Haynes Suggests Parking Lot At Cannon Park In Lakeville, Lakeville J., Aug. 4, 1983, at A6 (copy attached at Tab H). The addition of parking in Bicentennial Park area was discussed at the Selectmen's meeting in 1994. Projects, Lakeville J., Jan. 6, 1994, at A8 (copy attached at Tab I). The Board of Selectmen held an information meeting that year to seek the public's input on "a proposal to create additional parking through conversion of part of Lakeville's Bicentennial Park." Centennial Park Will Yield Parking Spaces, Lakeville J., May 12, 1994, at A10 (emphasis added) (copy attached at Tab J). Public comments at the meeting pointed to an unsafe situation on Holley Street where people had been parking on both sides of the street. Id. The Selectmen's proposal was to add parking spaces in the southern portion of Bicentennial Park in order to alleviate the parking issues around Holley Street and the overflow issue near The Factory. Id. The Town finalized the plan and added twenty new parking spaces at Bicentennial Park in hopes to resolve the Town's "long-standing village parking shortage." Village Center Adds 20 New Parking Spots, Lakeville J. Sept. 8, 1994, at 1 (copy attached at Tab K).

The Town's annual reports through 2020 demonstrate the Town's continuing acknowledgment that Bicentennial Park is a public park of historical significance and its continued commitment to maintain the park. The annual reports from 2009 to 2020 provide the following description for Bicentennial Park each year: "[a] small 'vest pocket' park developed within the foundation of the old Holley Block in Lakeville, at the corner of Holley Street and Millerton Road (Route 44)." Town of Salisbury, Annual Report (2020), p. 16 (copy attached at Tab L). The 2009 Annual Report in particular noted that the old

stone foundation in Bicentennial Park that was once part of Holley Block was repaired that year. Town of Salisbury, Annual Report (2009), p. 6 (copy attached at Tab M).

Throughout the Application materials and its presentation at the hearing the Applicant mischaracterizes Bicentennial Park as a “parking lot,” in an apparent attempt to deflect the Commission’s attention from the rich historic character of the District and Bicentennial Park.² Perhaps the most compelling demonstration of the Applicant’s gross distortion of the historic significance and value of Bicentennial Park, including its public parking spaces, is the November 5, 2020 letter to the Commission from Lakeville resident Sarah Morrison (copy attached at Tab N).³ As cogently articulated by Ms. Morrison:

The Holley Block with its Bicentennial Park contributes significantly to the historic character of the village center and the architectural integrity of the buildings that were and are at the heart of the Lakeville Historic District.

The Holley Block Building c. 1895 was razed in the late 1960s, but part of its foundation was preserved in the retaining wall that surrounds Bicentennial Park and the adjacent parking area. From the upper corner of Holley Block, one has a panoramic view of the Holley Manufacturing Company and its related buildings, parts of Factory Pond and its public park, the nearby Victorian homes, Lake Wononscopomuc and the Victorian railroad station. It allows the related historic structures to be seen and understood in their original relationship and context and it promotes a sense of harmony that is rare and extraordinarily pleasing. The parking area is used by the commercial businesses and their customers, without which those businesses would suffer financially.

The Holley Block, it is not an “empty” space that needs to be filled with something else. It is an integral part of the Lakeville Historic District and useful and important to those who live and/or do business there, or who pass through. Holley Block provides a tangible connection to Lakeville’s heritage and the

² Applicant repeats this mischaracterization in its application for CHFA funding of the project; the application materials also do not refer to its location in the District (copy attached at Tab O).

³ Intervenors request that the record of the prior withdrawn application be incorporated into the record of the current application.

beauty of the landscape and historic structures that surround us – many buildings in the District are outstanding examples of their particular architectural style.

Just as a pause in a symphony can be, or lead to, the most dramatic part, it also intrigues and engages a listener who stops for the brief moment and takes notice of the space between notes.

The Holley Block is the ideal place to pause and take notice of the full effect of the Lakeville Historic District and the iron industry that not only shaped it, but was its keystone.

In short, Bicentennial Park serves two complementary and important public purposes--to preserve the historic integrity and sweeping views of the District through its open area and centric location, and to provide needed parking spaces for the surrounding businesses.

The Holley Place project, however, would destroy Bicentennial Park in order to construct a three and one-half story apartment building in its place. As discussed in more detail below, this proposal not only would erase this vital historic resource from the District but would have a substantial adverse effect on business owners that have depended on the available parking spaces at Bicentennial to keep their employees' and their customers' cars parked safely off of adjoining public roadways.

II. Standards for review of the special permit application.

1. The Zoning Regulations.

The special permit application proposes a multi-family development within the Pocketknife Square Overlay District ("PKSQ"), which is in the CG-20 zone. Section 405.6 of the Zoning Regulations, in relevant parts, sets forth the following design requirements applicable to multi-family development in the PKSQ:

- a. Dimensional Requirements. Except as specified herein, the minimum yard setbacks, maximum building coverage, and maximum building height of the

underlying zoning district shall apply to new construction multi-family housing developments within the . . . PKSQ overlay district[].

1. The maximum building height shall be 40 feet if necessary to accommodate a third floor plus a gabled, hipped, or pitched roof consistent with community character.
2. The front yard setback shall conform to the underlying zoning district, or shall match the existing front yard setback of one or more buildings on abutting properties to maintain the existing street wall. The purpose of this provision is to maintain a predictability of design within the Village centers.
3. The maximum building coverage shall be 50 percent in the MFH Overlay District and 75 percent in the PKSQ Overlay District.
4. The minimum side yard setback within the PKSQ Overlay District shall be 6 feet.
5. The minimum rear yard setback within the PKSQ Overlay District shall be 10 feet
6. The minimum side yard setback within the MFH Overlay District shall be 50 percent of that required in the underlying zoning district.
7. The minimum rear yard setback within the MFH Overlay District shall be 50 percent of that required in the underlying zoning district.

b. **Building Design, Scale and Proportion.** All development shall be contextual in character. New construction shall be of a height, bulk, and design that complements the existing character of the neighborhood and community. If the site proposed for new multi-family construction is located within a Historic District, in accordance with Salisbury Historic District Commission (SHDC) policies and procedures, an application shall be made to SHDC in advance of seeking building and zoning approvals.

h. **Other External Elements.** All materials, construction, signs and other external elements of the building and on the site shall be compatible with the character of the neighborhood, and the rural and historic character of the Town.

Section 405.7 of the Zoning Regulations requires an applicant for a special permit for multi-family housing in the PKSQ to submit the application to the Commission "in accordance with Article VIII – Site Plans and Special Permits – Application Requirements, Standards and Procedures of this Section." The following are relevant sections from Article VIII of the Zoning Regulations:

802 Special Permit uses

802.1 Purpose

Special Permit uses are a class of uses that have characteristics or a location that unless properly planned and designed could be detrimental to properties in the neighborhood, the zone or overlay district. Accordingly this Article provides standards and requirements permitting the Commission to conduct a comprehensive review of the proposed Special Permit plan to:

- a. Assess the layout of the building(s), structure(s) or use(s) in relationship to the topographical and other natural features of the land, and of the impact of the use(s) upon the environment, health, safety, welfare, and convenience of the members of the community.
- b. Insure that the design and layout of the site and the proposed use(s) will constitute suitable and appropriate development in character with the neighborhood and will not result in an unreasonable decrease in property values or a detriment to the present and potential use of the area in which it is to be located.
- c. Assure that proposed buildings, structures and uses will provide for the maintenance of air, surface-water, and ground water quality and will not be detrimental to existing sources of potable water or other natural or historic resources.

...

803 Standards for Special Permits

When a Special Permit is required the Commission shall apply the following standards in review of the application.

803.1 General

All buildings, structures and uses for which a Special Permit is required under these Regulations must meet the applicable standards set forth throughout these Regulations, including, but not limited to, the standards set forth in 801 Site Plan Review Standards. In addition, the following standards shall apply to Special Permit uses.

803.2 Relation of Buildings to Environment

The size and intensity, as well as the design, of the proposed project or development shall be related harmoniously to the terrain and to the use, scale, and siting of existing buildings in the vicinity of the site. The use shall not create a nuisance to neighboring properties, whether by noise, air, or water pollution; offensive odors, dust, smoke, vibrations, lighting, or other effects.

803.3 Neighboring Properties

The proposed uses shall not unreasonably adversely affect the enjoyment, usefulness and value of properties in the general vicinity thereof, or cause undue

concentration of population or structures. In assessing the impact on surrounding properties the factors the Commission shall consider include, but are not limited to, the existing and proposed pedestrian and vehicular circulation, parking and loading plans, storm water management systems, exterior lighting, landscaping, and signage.

2. General standards of review of special permit application.

“[T]he function of a special permit is to allow a property owner to use his property in a manner expressly permitted under the zoning regulations subject to certain conditions necessary to protect the public health, safety, convenience, and surrounding property values.” Whisper Wind Development Corp. v. Planning & Zoning Comm’n, 32 Conn. App. 515, 525 (1993) (Dupont, C.J., dissenting), aff’d, 229 Conn. 176 (1994); accord, St. Joseph’s High School, Inc. v. Planing & Zoning Comm’n, 176 Conn. App. 570, 585-86 (2017). “The basic rationale for the special permit [is] ... that while certain [specially permitted] land uses may be generally compatible with the uses permitted as of right in particular zoning districts, their nature is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. If authorized only upon the granting of a special permit which may be issued after the [zoning] board is satisfied that parking and traffic problems have been satisfactorily worked out, land usage in the community can be more flexibly arranged than if [a specific proposed use] had to be allowed anywhere within a particular zoning district, or not at all.” (Citation and internal quotation marks omitted.) Barberino Realty & Dev. Corp. v. Planning & Zoning Comm’n, 222 Conn. 607, 612-13 (1992); accord, St. Joseph’s, 176 Conn. App. at 586. “The proposed use ... must satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience, and property

values.... Acting in this administrative capacity, the [zoning commission's] function is to determine whether the applicant's proposed use is expressly permitted under the regulations, and whether the standards set forth in the regulations and the statute are satisfied." (Citation and internal quotation marks omitted.) Whisper Wind, 32 Conn. App. at 520; see Barberino Realty, 222 Conn. at 614 (commission must decide "whether a particular application ... would be compatible with the particular zoning district") (emphasis in original).

It is the applicant's burden to demonstrate that the application fully complies with the applicable standards. See St. Joseph's, 176 Conn. App. at 614. Moreover, a zoning commission has no power to vary the zoning regulations to suit its desire for the project to go forward. See MacKenzie v. Planning & Zoning Comm'n, 146 Conn. App. 406, 431 (20313) (special permit should have been denied for failure of site plan to conform with technical requirements of the regulations).

Finally, it must be kept in mind that "[z]oning is not to be based on a plebescite of the neighbors. Their wishes are to be considered but the final ruling is to be governed by the basic consideration of the benefit or harm involved to the community at large.... [I]n exercising their zoning powers, the local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives, and not because of the whims of either an articulate minority, or even majority of the community." (Citations and internal quotation marks omitted.) TCR New Canaan, Inc. v. Planning & Zoning Comm'n, 1992 WL 48587, *26 (Conn. Super.); see IKE, Inc. v. Town of E. Windsor Planning & Zoning Comm'n, 1997 WL 793509, *4 (Conn. Super.) (same).

III. ARGUMENT.

- A. **The special permit application should be denied pursuant to C.G.S. § 22a-19 because intervenors have demonstrated that the proposed activity is reasonably likely to unreasonably impair the historic resources of the state, and have made a prima facie showing that feasible and prudent alternatives exist.**

Pursuant to C.G.S. § 22a-19, any person may intervene in any administrative proceeding based on facts alleged in a verified pleading that the proposed activity at issue “has, or is reasonably likely to have, the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or natural resources of the state.” The preservation of historic resources and character is within the scope of the natural resources which Section 22a-19 is designed to protect. See United Progress, Inc. v. Zoning Commission, 1994 WL 76803 (Conn. Super.).

1. **The unreasonable impact to the historic resources of the Town.**

The petition sets forth facts and expert testimony demonstrating that approval of the special permit application is likely to unreasonably destroy or impair the character of the District for two reasons. First, it is undisputed that the construction of the proposed apartment building will result in the destruction of Bicentennial Park. The park is in the center of the District and is a vital component of its unique historic character. It is hard to imagine a more compelling example of unreasonable impairment of historic resources than total destruction.

Second, the March 4, 2021 report of architectural historian Rachel Carley attached to the intervention petition and in evidence in this hearing thoroughly examines and describes the rich historical heritage of the District and the unique architecture of the numerous Federal and Eighteenth-Century buildings in the area. The report finds

that the proposed apartment building is a “massive 3 1/2 story structure that” is neither “in keeping” with nor of a design that complements the existing character of its neighborhood. We will not burden the Commission by reiterating here all of the findings in the Carley Report. Suffice to say that one of the state’s most respected experts on the importance of preserving historic districts and properties has opined, with detailed supporting facts, that the proposed apartment building will be completely out of character with this critical historical area of Lakeville.

Because Petitioners have demonstrated that the proposed activity is reasonably likely to cause unreasonable impairment and destruction of the public trust in the natural resources of the state, pursuant to § 22a-19 the Commission may not approve the special permit application “if, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative, consistent with reasonable requirements of public health, safety and welfare.” See Quarry Knolls II Corp. v. Planning & Zoning Commission, 256 Conn. 674, 735 (2001) (noting that § 22a-19 “explicitly provides that the agency, or the commission in this case, will consider, in the face of unreasonable pollution, whether there is a feasible alternative” (underscoring in original omitted)).

The terms “feasible” and “prudent” are defined by statute. “Feasible” “means able to be constructed or implemented consistent with sound engineering principles.” “Prudent” “means economically and otherwise reasonable in light of the social benefits to be derived from the proposed ... activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.” C.G.S. § 22a-38(17) & (18) (emphasis added).

2. Available off-site alternatives.

The SAHC's Affordable Housing Plan (May 2018) identifies a total of six Town-owned properties that are under active consideration for affordable housing developments (copy attached at Tab P). Id. at pp. 12-13 Filed with the Commission today is the report of Brian Miller, a principal of The Miller Planning Group ("Miller Report") (copy attached at Tab Q). Mr. Miller is a municipal planning consultant with extensive experience in advising land use commissions throughout the Northeast on numerous zoning issues. The Miller Report concludes that at least two of these properties are feasible alternative sites for a 12-unit affordable housing apartment building. The Miller Report focuses on the Salmon Kill (a/k/a Pope Property) and Perry Road properties. As he concludes, both sites can accommodate a twelve-unit development. We respectfully invite the Commission's attention to the Miller Report for a detailed discussion of both sites. Mr. Miller will be present at the March 22 hearing session to summarize his findings.

The Applicant will argue that the Holley Block site is the only prudent alternative because the Applicant has already incurred \$275,000 in debt to the state for pre-development costs for the Holley Place project, and that it cannot recoup that loss if the Commission decides that alternative sites are more appropriate. Intervenors respectfully submit that the Applicant's predevelopment costs do not render the Holley Place site the only prudent alternative. If that were the law, an applicant could always defeat a § 22a-19 petition by pointing to its pre-filing costs in preparing the application for the subject site. Such a proposition is inconsistent with the remedial purposes of § 22a-19. Moreover, in considering whether an alternative is prudent, the Commission

may consider the applicant's costs but "a mere showing of expense will not necessarily mean an alternative is imprudent." C.G.S. § 22a-38(18). Especially given the unique and critical historic nature of the Bicentennial Park property, and the significant self-imposed financial constraints in shoe-horning a 12 unit building on a .26 acre lot, the Commission should require the Applicant to submit evidence that compares the relative costs of developing the subject site to the costs of building a similar facility on the alternative sites discussed in the Miller Report. If the Applicant is unwilling or unable to supply that evidence, the application should be denied for insufficient information.

The Applicant cannot demonstrate that Bicentennial Park is the only feasible and prudent alternative simply by pointing to the Affordable Housing Plan's designation of the site as one of the six sites for potential affordable housing developments. When it identified the Bicentennial Park site in the Affordable Housing Plan, the SAHC of course did not have before it the evidence in this proceeding as to the impact on the District of the destruction of Bicentennial Park or the significant adverse impact the loss of parking would cause to neighboring businesses. And if 12 affordable housing units cannot be built on this site, there is no reason why the units cannot be built on any of the other sites identified in the Affordable Housing Plan. In short, denial of this application will not have a substantial adverse impact on the Town's achievement of its affordable housing goals, and will simply require use of one or more of the other sites to accommodate these units.

One last point on this issue. The Applicant stated at the March 8 hearing session that a 12-unit project is necessary in order to make the development "competitive." By this the Intervenors infer that a 12-unit building is required to attract a developer to

come to Salisbury and build a project that will generate a profit for the developer. Intervenor respectfully submit that maximization of a developer's profit is not a proper consideration for the Commission in evaluating prudent alternatives. Rather, the issue is whether the off-site options discussed by Mr. Miller are a feasible and prudent alternative to the unreasonable destruction of Bicentennial Park the Applicant proposes.

B. The Applicant has failed to show that the Application complies with the applicable requirements of the Regulations.

1. The Application fails to meet the requirements of the PKSQ Overlay District.

Filed today with the Commission is the expert report of Dainius Virbickas, P.E., a principal in the firm of Artel Engineering, Inc. (the "Virbickas Report") (copy attached at Tab R). Mr. Virbickas is a licensed Professional Engineer with years of experience in representing public and private clients regarding compliance of land use applications with requirements of applicable land use regulations. He was a member of the Bridgewater Zoning Commission for five years, and served as its chair for three years.

The Virbickas Report identifies numerous violations of the PKSQ regulations. We will not repeat those violations here, but respectfully invite the Commission's attention to the specific defects identified in the report. Mr. Virbickas will be present at the March 22 hearing session to summarize his findings.

As discussed, the Commission is powerless to approve the special permit application unless it complies with all applicable technical requirements of the Zoning Regulations. Mackenzie, 146 Conn. App. at 431. Therefore the Application's failure to comply with the PKSQ Regulations as enumerated in the Virbickas Report require denial of the special permit application on that ground alone.

2. Applicant has failed to prove that the proposed special permit use will comply with the general standards for Special Permits set forth in § 802.1 of the Regulations.

Section 802.1 of the Regulations in pertinent part requires the Commission, before approving any special permit application, to

- “Assess the layout of the building(s), structure(s) or uses ... and the impact of the use(s) upon the environment, health, safety, welfare, and convenience of the members of the community;
- “Insure that the design and layout of the state and the proposed use[s] will constitute suitable and appropriate development in character with the neighborhood and will not result in an unreasonable decrease in property values or a detriment to the present and potential use of the area in which it is to be located.”

Moreover, § 405.6.b of the PKSQ Regulations requires that “[n]ew construction shall be of a height, bulk, and design that complements the existing character of the neighborhood and community.” Section 405.6.h requires that all materials, construction, signs and other external elements of the building and on the site shall be compatible with the character of the neighborhood, and the rural and historic character of the Town.

Connecticut land use law is clear that a zoning commission may deny a special permit application for failure to comply with general public health, safety and welfare standards set forth in the zoning regulations even when the application meets all technical requirements of the regulations. St. Joseph's, 176 Conn. App. at 587-99.

The Applicant's proposed development at Bicentennial Park is out of character with and incompatible with the historic character of the neighborhood and with the surrounding business uses that depend on the Holley Block site for their off-site parking, for several reasons. First, as discussed, the Carley Report demonstrates that the

proposed massive apartment building is inimical to the preservation of the historic character of the District. (See page 12 above.)

Second, the Miller Report thoroughly analyzes the impact of the loss of the Holley Block parking spaces on the parking needs of surrounding businesses from a municipal planning perspective. It concludes that the conversion of Holley Block to the proposed apartment building use will have a significant adverse impact on these businesses and consequently to the economic viability of downtown Lakeville. We respectfully invite the Commission's attention to the Miller Report for a detailed discussion of his findings in this regard.

A disruption to the economic viability of a commercial neighborhood created by a proposed special permit use clearly renders the use incompatible with and unsuitable for the district and adversely affects the public welfare. It is also antithetical to responsible municipal planning, as the Miller Report demonstrates.

Third, the impact of the loss of Bicentennial Park's parking spaces will be devastating to at least four surrounding properties – 20 Millerton Road (RJS Holdings), 12 Millerton Road (Celeste Shannon), 22 Millerton Road (Judith Singelis), and 7 Holley Street (Passway Partners, LLC).⁴ Attached hereto at Tab S is an outline, for each of the properties, of the required number of parking spaces for the business at the property, the number of on-site spaces, and the average number of spaces on the Bicentennial Park lot regularly used by the businesses pre-COVID. Also attached hereto at Tab T is a table that compares, for each property, the minimum parking required by the Zoning

⁴ Elimination of the parking spaces also would ignore the additional parking needs of potential future uses of the immediate area surrounding Bicentennial Park, which, if implemented, would only exacerbate the current parking deficit. (See Board of Selectmen's minutes, December 7, 2020 regarding development of Depot building on Ethan Allen Street (filed today)).

Regulations, the number of deeded parking spaces or satellite parking spaces approved for the property, and the resulting net deficit in the parking spaces required for the property. The total required parking spaces for the four businesses are 86. The total deeded or approved satellite spaces are 25. The resulting deficit, by subtracting the deeded/approved spaces from the required spaces, is 61. If the Bicentennial Park lot is no longer available (or there is only a handful of public spaces left after construction), this massive parking deficit will only worsen.

Moreover, the elimination or substantial reduction in public parking spaces on the Bicentennial Park lot will render all four of the properties nonconforming, and one additional property in violation of its special permit conditions. Two of the properties are discussed in detail in a November 5, 2020 letter from Attorney Mark Capecelatro to the Commission (copy attached at Tab U). Attorney Capecelatro focuses first on the 20 Millerton Road property owned by RJS Holdings. He notes that the building on this property was constructed in the 1800s and has no on-site parking. Based on the current usage of the building – two apartments and three commercial businesses with 1,500 square feet of rental space--the required number of spaces is 10. All of these spaces are located in Bicentennial Park. If the special permit application is granted, as Attorney Capecelatro demonstrates, 20 Millerton Road will be made nonconforming. Section 500.2 of the Zoning Regulations does not allow the creation or expansion of nonconforming uses or buildings.

Attorney Capecelatro then turns to the property at 24 Millerton Road (owned by 6 of Diamonds LLC a/k/a Deano's Pizza). That property received a special permit for a high turnover restaurant from the Commission on October 27, 2006. The approved site

plan (attached to the Capecelatro letter) shows allocated on-site parking spaces and available satellite parking on the Holley Block lot. The special permit was conditioned in part on the requirement that "all parking by employees of the Special Permittee shall use satellite parking facilities as provided in Section 526 " (See Tab S, p.5) The satellite parking to which the condition refers is obviously spaces in Bicentennial Park as shown on the site plan. If the satellite parking spaces in Bicentennial Park are eliminated, this would place the property owner in violation of this explicit condition of the special permit.

The three other properties discussed above (22 Millerton Road, 12 Millerton Road, and 7 Holley Street) are similar to 20 Millerton Road in that they have far fewer on-site spaces than the Regulations require, and depend on Bicentennial Park for their satellite parking needs. If the Bicentennial Park spaces are eliminated or drastically reduced, the nonconformity of the properties to the Regulations' parking requirements will increase.

The Commission has no authority to grant the special permit application because the approval either 1) will render four abutting or nearby properties nonconforming or would increase their nonconformity, and 2) will place one nearby property in direct violation of its special permit conditions. See MSW Associates, LLC v. Planning & Zoning Comm'n, 2014 WL 4637476, *42-43 (Conn. Super.) (commission properly denied special permit application because site plan required modifications to adjacent property, and record was insufficient to show whether the modification would render the adjacent property nonconforming). Moreover, Intervenor's do not bear the burden on this or any other issue in this proceeding. It is the Applicant's burden to show that the

grant of the special permit will not render these properties more nonconforming or in violation of a special permit condition. The Application materials fail even to acknowledge this issue, let alone meet that burden.

At the March 8 hearing session the Applicant's traffic engineer opined that, based on snapshots he took of the Bicentennial Park parking spaces utilized over four days in or about October 2020 (in the midst of the COVID lockdown), he was "confident" that the parking needs of the nearby businesses could be "accommodated."

Contrast this with the affidavits filed today by Joseph Schaefer on behalf of RJS Holdings (20 Millerton Road), Celeste Shannon (12 Millerton Road), and Judith Singelis (22 Millerton Road) based on their first-hand knowledge of the Bicentennial Park parking spaces they regularly use and need, in a non-COVID environment, in the conduct of the businesses at these locations. These owners testify that the average number of spaces in the park utilized by these businesses is 12-16 spaces on a daily basis (6 spaces by 20 Millerton Road, 5-7 spaces by 12 Millerton Road, and 1-3 spaces by 22 Millerton Road). The owners are clear on the adverse impacts their businesses will face if the existing available spaces at Bicentennial Park are substantially reduced.

- The Schaefer affidavit (20 Millerton Road) states (copy attached at Tab V):
 1. "I purchased this property because the nearby parking spaces at Bicentennial Park provided a safe parking option for my commercial and residential tenants.
 2. "My property has two one-bedroom apartments and three commercial offices. Currently, all four residential tenants and five employees of the three commercial tenants require parking (total of nine vehicles). On average, there are about six vehicles of my residential and commercial tenants that are parked on the parking spaces at Bicentennial Park. Two of my commercial tenants also have clients and guests that regularly come by the offices and use the parking spaces at Bicentennial Park.

3. "I spoke with two of my tenants, one residential tenant and one commercial tenant, and they both expressed that they will likely have to leave my property if they lose the parking spaces at Bicentennial Park.
 4. "There are no alternative parking options available around my building that can be conveniently utilized by my tenants in the event they lose the parking spaces at Bicentennial Park.
 5. "My business is going to be adversely affected by, among other things, losing the parking spaces at Bicentennial Park as I cannot afford my mortgage without my tenants."
- The Shannon affidavit (12 Millerton Road) states (copy attached at Tab W):
 1. "On average, there are about five to seven vehicles of my residential and commercial tenants that are parked on the parking spaces at Bicentennial Park.
 2. "There are no alternative parking options available around my building that can be conveniently utilized by my tenants in the event they lose the parking spaces at Bicentennial Park.
 3. "In late 2017 or early 2018, I had a conversation with First Selectman Curtis Rand, during the time the Town of Salisbury was in the process of completing the crosswalk signaling and highway bump-out on Route 44. When I expressed concern that the bump-out would cost my business 2 on-site parking spaces, Mr. Rand countered by explaining to me that additional parking was available at Bicentennial Park.
 4. "I rely on rental income from this property to adequately maintain the building. This rental income will be compromised if my tenants are adversely affected by the loss of the parking spaces at Bicentennial Park.
 5. "My business is going to be adversely affected by, among other things, losing the parking spaces at Bicentennial Park."

- The Singelis affidavit (22 Millerton Road) states (copy attached at Tab X):
 1. "I purchased this property because the nearby parking spaces at Bicentennial Park provided a safe parking option for my clients and guests. Parking for my business was a major consideration and I would not have purchased the building 18 years ago if there were no parking spaces available at Bicentennial Park.
 2. "My business uses the available parking spaces at Bicentennial Park on a daily basis. My business uses about one to three spaces at Bicentennial Park on average for my vehicle and vehicles that make deliveries to my business.
 3. "I organize three to four receptions at my gallery (six to eight receptions in some years) each year hosting about fifty (50) people at these receptions. I spend a lot of time and money putting together professional advertisements and sending out special invitations for the receptions.
 4. "I am not going to be able to host these receptions in the event that the Planning and Zoning Commission grants the Applicant's application for special permit because I will no longer be able to utilize the parking spaces at Bicentennial Park for my guests. There are already insufficient public parking options in the area, and the elimination of the parking spaces at Bicentennial Park is going to make it impossible to accommodate fifty guests at my receptions. This will have a real and devastating impact on my business."

In addition, the March 15, 2021 letter to the Commission from Dennis Dressel, president of Assured Partners' office at 12 Millerton Road (filed today) (copy attached at Tab Y), provides in pertinent part:

"We have recently been notified of a proposal to construct an affordable housing building using the current park and parking lot spaces which are directly across Holley Street from our office. This is already a congested area and we would lose parking spaces for our 6 employees at that office when the parking lot is no longer available.... I cannot think of another option for our employee parking."

Whose testimony should be credited--the assumption of the Applicant's consultant who presumably has no knowledge of the history of the use of the spaces at Bicentennial Park, or the sworn statements of these owners and tenants who depend on

the continued availability of the spaces for their livelihoods? We submit that the answer is clear. See St. Joseph's, 176 Conn. App. at 604 n.23 (commission properly credited the testimony of neighbors in opposition to special permit application when testimony was based on neighbors' first-hand experience with the prior use of the subject property).

C. Additional legal challenges facing the Holley Place project.

Numerous legal obstacles to the Holley Place project face the Applicant and the Town in addition to those raised above. While these challenges are not within the technical jurisdiction of the Commission to address, we bring them to the Commission's attention because 1) we wish to avoid any later argument that Intervenors waived their right to assert these claims in court because they did not exhaust administrative remedies, and 2) these additional challenges further demonstrate how misguided and ill-considered the project is.

1. Regulatory Takings.

To the extent that approval of the Application would have a substantial adverse impact on the viability of Intervenors' businesses and thus cause a substantial reduction in the values of their properties, Intervenors reserve the right to commence an action for damages against the Town in state or federal court asserting that the Commission's approval of the special permit application constitutes a regulatory taking of their property without just compensation in violation of the fifth amendment to the United States Constitution.

2. Proceeding under C.G.S. § 7-131n.

General Statutes § 7-131n provides in pertinent part that if a municipality “takes any land ... which land was purchased for park or other recreational or open space purposes, or which had been dedicated for such purposes, such municipality shall provide comparable replacement land at least equal in value ... to the value of the land taken ” Given the unique historical value of Bicentennial Park and its location in the center of the District, the Town will not be able to comply with § 7-131n because there simply is no “comparable replacement land” that could substitute for the destruction of Bicentennial Park. The Intervenors intend to pursue all remedies available to them under § 7-131n to stop the lease of Bicentennial Park to the Applicant to build an apartment building.

3. Violation of conditions of 1967 gift.

Intervenors’ position is that the use of Bicentennial Park to build a massive, three and one half story apartment complex wholly out of character with the surrounding buildings is a clear violation of the conditions imposed by the donor of the 1967 gift used by the Town to purchase the property. Intervenors intend to pursue all remedies available to them against the Town to enforce the terms of the gift.

4. Improper extension of 2018 option agreement.

By the express terms of the August 1, 2018 Option Agreement with the Applicant, only two extensions are allowed, and the second extension expired on July 31, 2020. Accordingly, the Board of Selectmen acted illegally and improperly in approving a third extension. In addition the Board of Selectmen acted illegally and improperly in approving a third extension without obtaining Town Meeting approval, and by executing

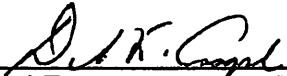
the extension on September 16, 2020, backdated to show an effective date of August 1, 2020. Because of the invalidity of these actions, the Applicant has no valid interest in the Bicentennial Park property and thus no standing to pursue land use approvals.

CONCLUSION

For the foregoing reasons the Intervenors respectfully request the Commission to deny the special permit application.

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SUSAN GALLUZZO, WILLIAM
MUECKE, CELESTE SHANNON,
JUDITH SINGELIS, AND
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