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April 8, 2021

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Planning and Zoning Commission  
Town of Salisbury  
Town Hall  
P.O. Box 548  
27 Main Street  
Salisbury, CT 06068

**Re: Special Permit #2021-0123 for a 12-Unit Multi-family Housing in PKSQ  
and APA – Salisbury Housing Committee – 11 Holley Street  
Legality of Two Intervenors' Apartment Uses**

Dear Commissioners:

At the March 22 public hearing session, the Chair suggested that the use of one or more of the Intervenors' properties for residential apartments was illegal. He requested that we investigate that issue and report back at the April 14 session.

The Chairs' apparent reference was to the two one-bedroom apartments at 20 Millerton Road (RJS Holding) and one four bedroom apartment at 12 Millerton Road (Celeste Shannon). Intervenors' understanding and belief is that the apartment at 12 Millerton Road has been continuously used for that purpose since before 1977 when the Shannons bought the property – i.e., at least 44 years. Intervenors' understanding is that the two apartments at 20 Millerton Road have been continuously used for such purposes since at least 1990 – over three decades ago.

Intervenors submit that the issue of the legality of these apartments has no legal bearing on the Commission's consideration of this special permit application. To begin with, the Commission has no jurisdiction to determine whether a particular land use is illegal or qualifies as a prior nonconforming use. The Salisbury Zoning Regulations designate the Zoning Administrator (also referred to as the Zoning Enforcement Officer) as the official responsible for enforcement of the Regulations, with the authority "to order in writing the remedying of any conditions found to exist in violation of any provision of these Regulations." (Regulations § 900.2). See also C.G.S. § 8-12 (zoning regulations "shall be enforced by the officer or official board or authority designated therein").



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In the decades in which the apartment at 12 and 20 Millerton Road have been in existence, no zoning enforcement action has even been taken by the Town's zoning enforcement officer alleging that the apartment uses at these properties violate the Regulation.

Even if the Town's zoning enforcement officer had ever alleged that these uses are illegal, that issue is immaterial to the Commission's consideration of this application. Intervenors have no burden in this proceeding to prove that these uses are legal. Nor does the Commission's rumination about the legality of these uses prevent or impede the owners of these properties, as § 22a-19 Intervenors and as parties who would be statutorily aggrieved by approval of the application, from demonstrating the significant adverse effects on their businesses of the loss of the decades-long use by them of the Bicentennial Park parking spaces that would result from the approval of the application. Any determination by the Commission that these owners are somehow precluded from asserting their claims here because the Commission doubts the legality of their uses would not only be fragrantly illegal. It would also demonstrate to any reasonable person that the Commission intends to penalize and retaliate against these owners for exercising their first amendment rights to object to the application.

Moreover, while completely irrelevant to this proceeding, it should be noted that under the current CG-20 Regulations, single family dwellings are allowed as of right by issuance of a zoning permit, and multi-family dwellings are allowed by special permit. (Regulations § 205.2) The three apartments at 12 and 20 Millerton Road together would require only three parking spaces. (Regulations §§ 703.9 and 703.11) It is therefore inconceivable under these circumstances that the Zoning Enforcement Officer would even contemplate issuing cease and desist orders against these apartment uses, or that permits for these long-standing residential uses would be denied.

Finally, even the Commission were to disregard the off-site parking needs (three spaces) of these apartment uses in considering the displacement of parking caused by the applicant's project, that would merely reduce the average daily use by Intervenors of Bicentennial Park's parking spaces from 12 to 16 spaces to 9 to 13 spaces. That is simply not a material change that would undercut in any way the demonstrated off-site parking needs of the Intervenors that would be ignored by approving the application.



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In sum, the Commission's questioning of the illegality of the apartment uses at 12 and 20 Millerton Road is a red herring that is legally immaterial and factually irrelevant to the Commission's decision on this special permit application.

Very truly yours,

CRAMER & ANDERSON, LLP

By   
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