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Hon. Albert M. Rosenblatt

August 29, 2025

Via Email: landuse@salisburyct.us

Dr. Michael Klemens, Chairman
Town of Salisbury
Planning & Zoning Commission
27 Main Street
P.O. Box 548
Salisbury, CT 06068

**RE: Aradev, LLC Special Permit Application for 104 & 106
Sharon Road & 53 Wells Hill Road – Map 47 – Lot 2 & 2-1
Our File No.: 1308.0001**

Dear Chairman Klemens:

We represent Aradev, LLC (“Aradev”) in the above-referenced application before the Town of Salisbury Planning and Zoning Commission (the “Commission”). We write in response to comments made at the public hearings concerning the “intensity” of the project proposed. The concern surrounding intensity appears to arise from a misunderstanding of Section 803.2 of the Zoning Regulations. For the following reasons, we respectfully submit that our client’s application fully complies with the Zoning Regulations and in particular, Section 803.2.

First, Section 803.2 does not state that a more intense use is prohibited. Otherwise, no vacant parcel of land requiring a special permit could ever satisfy this requirement because it would always be more intense than what was there before (an unused parcel).

Rather, Section 803.2 expressly allows greater intensity of a site so long as that use does not create nuisance-type conditions¹ and is harmonious

¹ Nuisance is not defined in the Zoning Regulations. We therefore look to the legal definition in this context for meaning. A common-law private nuisance claim requires that “the defendant’s conduct was the proximate cause of an unreasonable interference with the plaintiff’s use and enjoyment of his or her property. The interference may be either intentional ... or the result of the defendant’s negligence.... Whether the interference is unreasonable depends upon a balancing of the interests involved under the circumstances of each individual case” and “should be [determined] in light of the fact that some level of interference is inherent in modern society. There are few, if any, places remaining where an individual may rest assured that he will be able to use and enjoy his property free from all interference. Accordingly, the interference must be substantial to be unreasonable.” (Citations omitted.) *Pestey v. Cushman*, 259 Conn. 345, 361, 788 A.2d 496 (2002) (adopting basic principles of 4 Restatement [Second], Torts, § 822 [1979]). *Boyne v. Town of Glastonbury*, 110 Conn. App. 591, 603, 955 A.2d 645, 654 (2008). Determining unreasonableness is essentially a weighing process. Factors to be weighed include but are not limited to suitability for the locality and whether an applicant is taking all “feasible precautions to avoid unnecessary interference” with neighbors’ use and enjoyment of his or her property. *Pestey, supra*, at 360.

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with the surrounding uses. The issue is not whether the proposed use is more intense than what was there before it; it is whether the greater intensity creates nuisance-type conditions for neighboring properties. The regulation references “noise, air, or water pollution; offensive odors, dust smoke, vibrations, lighting, or other effects.”

We will not regurgitate the lengthy expert opinions submitted in this application here except to point out that the Commission’s experts and Aradev’s experts are in general agreement that no nuisance-type concerns will result from proposed project. The consultants who offer opinions in opposition to the application speculate on noise and other potential impacts without analysis using their own collected data. In the case of Bennett Brooks’ opinion he goes so far as to say that nuisance is determined by “audibility” or “if anyone can hear it you have a nuisance.” This new definition proposed by Mr. Brooks has no support in the law or logic. If this extreme view of nuisance were accepted, virtually *any noise* including children at play, air conditioner units, opening garage doors and dogs barking would be considered a nuisance. This cannot be the intent of the regulations.

The experts chosen by both the Commission and Aradev are highly regarded practitioners. They have clearly rebutted the consultants opinions offered in opposition to the application. As Herbert Singleton noted at the hearing on August 26, 2025, the audibility definition of nuisance is a “dangerous one.”

On technically complex issues beyond the expertise of lay commissioners such as here, a land use agency cannot ignore unrefuted expert testimony. *Loring v. Plan. & Zoning Comm'n of Town of N. Haven*, 287 Conn. 746, 759 (2008) (cite omitted). However, as you know, land use agencies determine credibility of witnesses and may choose to disregard unrefuted expert testimony if they do not believe it to be credible, though there must be some evidence or discussion in the record which undermines the credibility of the expert. See *United Jewish Center v. Brookfield*, 78 Conn. App. 49, 59 (2003) (“Agency members can act based upon their own personal knowledge on the history of the property involved in the application.... However, for the agency to disregard evidence from experts there must be some evidence in the record which undermines either the experts' credibility or their final conclusions.... When the agency chooses to rely upon special knowledge or expertise of some its members, it must bring the matter up at an appropriate stage of the proceedings, generally at or prior to the public hearing, so that anyone adversely affected by that information has an opportunity to question and rebut it.” [Internal quotation marks omitted.]

Here there is no evidence presented which would undermine the credibility of the experts. The experts have clearly established the application's compliance with Section 803.2.

We also note that the Zoning Regulations specifically permit hotels, with events, in the RR-1 Zone. See Zoning Regs, § 213.5. In other words, the Zoning Regulations already permit both the existing and the proposed use on the property. "The basic rationale for the special permit ... is that while certain land uses may be generally compatible with the uses permitted as of right in a particular zoning district, their nature is such that their precise location and mode of operation must be individually regulated because of the particular topography, traffic problems, neighboring uses, etc., of the site." (Citations omitted.) *Whisper Wind Dev. Corp. v. Plan. & Zoning Comm'n of Town of Middlefield*, 32 Conn. App. 515, 519 (1993), *aff'd*, 229 Conn. 176 (1994)

Therefore, since the proposed use, as a special permit use, is *already* harmonious with the surrounding properties, it is fully compliant with the Zoning Regulations. The extent of the change proposed will not cause disharmony. The property is already hosting events and already emanating noise, (car shows, tent weddings, conferences, outside music, etc.) in addition to having guests at the restaurant and hotel. There is nothing preventing the owners of the property from renovating the hotel; redesigning the landscape and lighting; hosting indoor and outdoor events more frequently and until late hours; from renovating and relaunching the restaurant and pool; from parking droves of vehicles on the property and having delivery trucks enter and exit the property freely. *It is by virtue of the special permit sought by Aradev that conditions may be applied to the proposed project that will mitigate nuisance-type concerns arising from these activities.*

In other words, this application, if approved, will move this large property from an existing uncontrolled, unregulated non-conforming use to a regulated, controlled and permitted special permit use. As a general matter, "[z]oning regulations ... seek the elimination of nonconforming uses, not their creation or enlargement.... [T]he accepted policy of zoning ... is to prevent the extension of nonconforming uses ... and that it is the indisputable goal of zoning to reduce nonconforming to conforming uses with all the speed justice will tolerate...." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Woodbury Donuts, LLC v. Zoning Board of Appeals*, 139 Conn. App. 748, 760–61 (2012). The Salisbury Zoning Regulations clearly identify this same goal. See Zoning Regulations, § 500.2 ("With certain exceptions provided for in this section, it is the intent of these Regulations to reduce or eliminate non-conforming situations as quickly as possible.").

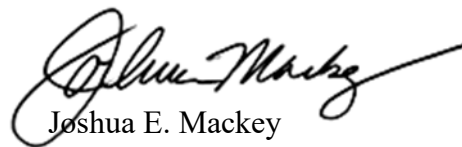
Nevertheless, the rule concerning the continuance of a nonconforming use protects the right of a user to continue the same use of the property as it existed before the date of the adoption of the zoning regulations.” *Woodbury Donuts*, supra, 139 Conn. App. at 761. Indeed, “[i]t is a fundamental zoning precept in Connecticut ... that zoning regulations cannot bar uses that existed when the regulations were adopted.” (Internal quotation marks omitted.) *Taylor v. Zoning Board of Appeals*, 65 Conn. App. 687, 694 (2001).

In this case, the special permit approval would “provide zoning-related benefits” in that it would reduce the nonconformity. See *Pfister v. Madison Beach Hotel, LLC*, 197 Conn. App. 326, 330 n. 4 (2020), *overturned on other grounds*, 341 Conn. 702 (2022) (overturned on the ground that the applicant had failed to establish that their use was nonconforming in the first place). By rejecting the permit application and permitting the existing use to continue as a non-conformity, the Commission would be failing to reduce or eliminate non-conforming situations as quickly as possible, as their Zoning Regulations demand.

Aradev has demonstrated in its application that the published, objective, and quantifiable standards in the Zoning Regulations have been met. Critical aspects of the application have been reviewed by the Commission’s experts with favorable recommendations. Therefore, we respectfully submit that the application must be approved by the Commission.

Sincerely,

MACKEY BUTTS & WHALEN, LLP



Joshua E. Mackey

cc: ARADEV LLC