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September 4, 2025

Via email: landuse@salisburyct.us

Dr. Michael Klemens, Chairman,
Abby Conroy, Director of Land Use,
And Members of the Commission
Salisbury Planning and Zoning
Salisbury Town Hall
27 Main Street
PO Box 548
Salisbury, CT 06068

Re: #2025-0287 / Wake Robin LLC & Ms. Serena Granbery (ARADEV LLC) / 104 & 106 Sharon Road & 53 Wells Hill Road / Special Permit for Hotel, Redevelopment of the Wake Robin Inn (Section 213.5) / Map 47/ Lot 2 & 2-1 /

Dear Chairman Klemens and Members of the Commission:

Attached please find Angela and William Crugers' letter regarding the applicability of the Kleinsmith case and similar caselaw, and spot zoning to the present matter. Please add the attached letter to the record of the above-cited Application.

Very truly yours,

Perley H. Grimes, Jr.

Perley H. Grimes
Enclosures
cc: Attorney Andres
Attorney Mackey

Perley H. *Grimes*, Esq.

Town of Salisbury
Planning & Zoning Commission
Attn: Michael Klemens, Chairman
27 Main Street
Salisbury, CT 06068

September 4, 2025

RE: Application 2025-0287 / Wake Robin LLC & Ms. Serena Granberry (ARADEV LLC) / 104 & 106 Sharon Road & 53 Wells Hill Road / Special Permit for Hotel, Redevelopment of the Wake Robin Inn (Section 213.5) / Map 47 / Lot 2 & 2-1 /

Dear Chairman Klemens:

As you know, this firm represents Angela and William Cruger ("Crugers") of 86-88 Wells Hill Road, Lakeville, Connecticut, who own property abutting or within 100 feet of a prior non-conforming property and use known as the Wake Robin Inn. For over a year now, Aradev, LLC has been working on expanding the Wake Robin Inn and its uses. Particularly, the proposed expansion would permit 53 hotel rooms via a three-story addition to the existing Inn, an event space, four freestanding cottages, a fast and casual restaurant and bar, and an indoor spa and gym area.

As you know, the Crugers are opposed to the Aradev, LLC application for a special exception permit for various reasons stated in the current application, as well as reasons stated in the record of the prior application # 2024-0257. The purpose of this letter is to formally notify the Planning and Zoning Commission of the Town of Salisbury ("Commission") of the Crugers' opposition to the above-captioned current application ("Application") for two additional reasons. First, approval of the Application

would violate well-established Connecticut Supreme Court precedent that holds that approval of the current Application would be an impermissible expansion of a previously-existing non-conforming use. Here, there can be no doubt that approval of the Application would serve to expand the prior non-conforming use associated with the Wake Robin Inn. Second, such approval would also constitute spot zoning.

As a result of one or both of these additional reasons, Aradev's special permit application to expand the Wake Robin Inn must be denied.

A. The Application Seeks to Impermissibly Expand a Prior Non-Conforming Use.

The Application should be denied because it impermissibly seeks to expand a prior non-conforming use. The Wake Robin Inn was built and used as a hotel before the Town of Salisbury enacted zoning regulations. It is a prior non-conforming building and use in the RR1 Residential Zone. Article V of the Town of Salisbury's Zoning Regulations ("Regulations") remains in effect and is applicable to prior non-conforming structures and uses and applies to the Wake Robin Inn. Under Section 500.1 of the Regulations, the Inn constitutes a prior non-conforming structure and use.

Furthermore, a requirement to lessen or eliminate non-conforming uses is set forth in the express text of the Regulations. Section 500.2 of the Regulations, Continuance of a Non-Conforming Situation, states, "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." Section 503.1 of the Regulations states, "No non-conforming use of land or non-conforming use of a building or a structure shall

be extended to occupy a greater area, space or portion of such land, building, or structure than was occupied or manifestly arranged for the use on the date that its non-conforming status was established." Similarly, Section 503.2 provides:

> Except as provided below, no non-conforming building or structure shall be altered, enlarged, or extended in any way that increases the area or space, including vertical enlargement of that portion of the building or structure that is non-conforming. For purposes of this regulation, vertical is defined as enlargement or expansion either upward or downward.[1]

Exceptions provided therein are not applicable here.

Based on the express language of Section 500 of the Regulations alone, the proposed expansion is impermissible as the cottages, event space, fast and casual restaurant, bar, gym and spa will be expanded to occupy a greater area, space, or portion of the land. Similarly, the non-conforming structure would be altered, enlarged, or extended in a way that increases the area or space that the building occupies because the expansion proposed to add to the existing structure both vertically and horizontally. *See* Wells v. Zoning Bd. of Appeals of City of Shelton, 180 Conn. 193, 198 (1980)(holding there to be an impermissible change in use where a nonconforming trailer park proposed to extend to an additional area of the property it occupied, and an additional 16 trailer sites were to be added).

Connecticut caselaw also supports the above interpretation. In dictum, the Connecticut Supreme Court has stated, "[A] nonconforming structure cannot be

[1] Applicant's Attorney Joshua Mackey has acknowledged that Section 503.2 applied to Aradev's development. See his Letter dated September 17, 2024

increased in size in violation of zoning ordinances, i.e., nonconforming additions may not be made to the nonconforming structure." Bauer v. Waste Mgmt. of Connecticut, Inc., 234 Conn. 221, 243 (1995). The foregoing echoes the strong public policy of the State of Connecticut to prevent expansions of prior non-conforming uses. *See* High Watch Recovery Center, Inc. v. Planning and Zoning Comm'n of Town of Kent, 352 Conn. 1, 14 (2025)("[O]ur cases repeatedly and uniformly hold that nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit – in no case should they be allowed to increase."); Raffaele v. Planning and Zoning Bd. of Appeals of Town of Greenwich, 157 Conn. 454, 458 (1969)(It is a "settled proposition that zoning regulations in general seek the elimination rather than the enlargement of nonconforming uses."); Woodbury Donuts, LLC v. Zoning Bd. of Appeals of Town of Woodbury, 139 Conn.App. 748, 760-61 (2012)("The accepted policy of zoning is to prevent the extension of nonconforming use and that it is the indisputable goal of zoning to reduce nonconforming to conforming uses with all the speed justice will tolerate."); Crabtree Realty Co. v. Planning and Zoning Comm'n of the Town of Westport, 82 Conn.App. 559, 562, cert. denied 269 Conn. 911 (2004)("Although existing nonconforming uses are protected by statute[,] public policy favors their abolition as quickly as the fair interest of the parties will permit. In no case should they be allowed to increase."); Selbert v. Shelton Planning & Zoning Comm'n, 2020 WL 8765933, No. AAN-CV19-6035276S at *3 (Conn. Super. Ct. Dec. 23, 2020)"It is a general principle in zoning…that nonconforming uses should be abolished or

reduced to conformity as quickly as the fair interest of the parties will permit. In no case should they be allowed to increase. The accepted policy of zoning is to prevent the extension of nonconforming uses.").

In a similar case, the Supreme Court has held that proposed amendments which violated other provisions of the zoning regulations were ineffective. *See* Kleinsmith v. Planning & Zoning Comm'n of Town of Greenwich, 157 Conn. 303 (1968). In Kleinsmith, representatives of a prior non-conforming hotel filed a petition to amend Section 15(a) of the zoning regulations of the Town of Greenwich by adding an additional subsection (subsection 6) to provide as follows:

> The sale of alcoholic liquor served from but not consumed at a service bar in a hotel which is non-conforming by reason of its location in a residential zone shall not be deemed to be an additional use, provided that (a) such hotel contains dining facilities adequate for all the occupants of its rooms and (b) the sale of such alcoholic liquor is made to overnight guests of the hotel, or guests using the hotel dining facilities.

Id. at 307. The Greenwich zoning regulations further provided at Section 15(a)(1), "A non-conforming use of land or structure shall not be changed to any other non-conforming use which is more detrimental to the neighborhood." Id. at 306. The plaintiffs, who comprised of neighboring property owners, appealed the commission's decision to the Connecticut Supreme Court on the basis that, inter alia, the amendment violated the provision of the zoning regulations in that a non-conforming use should not be altered to the detriment of the neighborhood.

The Supreme Court agreed with the plaintiffs, stating:

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> The plaintiffs claim that the amendment adopted, which purports to permit the sale of liquor by nonconforming hotels, necessarily involves a change in use. They also claim that such a change in use permitting the sale of alcoholic liquor would be more detrimental to the neighborhood. The use of property for the sale of liquor may well be deemed to have a far more harmful effect upon the health and welfare of the community than ordinary business. A business involving the sale of liquor is one which admittedly may be dangerous to public health, safety and morals. A purpose and intention of the Greenwich building zone regulations is to abolish nonconforming uses, or to reduce them to conformity, as speedily as justice will permit. This is in accordance with the spirit of the law and the spirit of zoning. The advantages which the owners of nonconforming property acquire by the enactment of a zoning ordinance are not to be subsequently augmented except as permitted by the ordinance. We conclude that it was the obvious intention of the commission that [Section] 15(a)(1) of the regulations remain unchanged. The provision of the amendment that the sale of liquor by the nonconforming hotels shall not be deemed to be an additional use is ineffective in view of the continued existence of the requirement of the regulation that no nonconforming use be changed to one more detrimental to the neighborhood. The sale of liquor constitutes a change of use to one more detrimental to the neighborhood and is in direct violation of [Section] 15(a)(1).

(Internal citations omitted) Id. at 313-14. Section 15(a)(1) of the Town of Greenwich's zoning regulations is remarkably similar to Section 501.1 of the Town of Salisbury's zoning regulations.

Given that the Commission did not, in the May 6, 2024 Amendments seek to simultaneously amend or remove Section 501.1 of the Regulations or any other Section of Article V, Nonconforming Uses, Building, and Lots, Section 501.1 remains in full force and effect. Aradev, LLC seeks a special exception permit based on "Amendments" adopted on May 6, 2024. Therefore, pursuant to Kleinsmith, even if the Wake Robin Inn expansion were permitted under the May 6, 2024 Amendments, the

Application must nonetheless be denied because the proposed expansion therein creates a per se violation of Section 501.1 of the Regulations. Although under Section 501.1 the Commission "may approve a change of the non-conforming use to another non-conforming use", no such change is being sought under the Application. Rather, the Application seeks to expand the prior non-conforming uses by proposing additional uses, to wit, an event space, spa, fast and casual restaurant and cottages. The Application keeps the non-conforming hotel and adds to it other uses which creates a mixed use commercial development in the R-R1 zone.[2]

Likewise, in Raffaele v. Planning and Zoning Bd. of Appeals of Town of Greenwich, 157 Conn. 454 (1969), the Connecticut Supreme Court held that a special exception application which purported to expand a prior non-conforming use could not be granted. In Raffaele, a prior non-conforming club owned 1.6 acres of land as a non-conforming use in a residential zone and applied to the building inspector to extend the existing parking lot and construct a breakwater to protect the land from storms emanating from the Long Island Sound. Id. at 456-57. The zoning board of appeals granted the special exception on the basis that, subject to imposed limitations, the standards set forth in the zoning regulations for granting a special exception application

[2] Note, 501.1 can only be used if the proposed non-conforming use "will not have an adverse effect on the zone, the neighborhood, or surrounding properties greater than the effect of the current non-conforming use." That certainly is not the case here. Regulations Section 501.1 further states, "In making this determination the Commission shall consider the character, nature, purpose and scope of the proposed changed compared to the existing non-conforming use. This includes any new or increased activity on the property, such as traffic, noise, lighting and other external factors affecting the zone, neighboring, or surrounding properties."

were satisfied. Id. at 458. Owners of property in the area appealed, and the trial court sustained the appeals:

> holding, in substance, that the basic requirements for a special exception had not been met, that the club, as now constituted, is nonconforming under the requirements for the R-12 zone in which it is located, that a nonconforming use of property should not be extended by a special exception and that the conditions imposed by the board of appeals were not properly within the pruvue (sic) of the special exception regulation.

Id. at 459. The board and the club appealed, and the Connecticut Supreme Court affirmed the trial court's holding, reasoning:

> The conditions and safeguards which the board was authorized to apply were required to be in accordance with the public interest and the comprehensive plan found in the regulations and in harmony with the general purpose of the regulations. Nowhere in the regulations is there any indication that an extension of a nonconforming use is to be permitted....It is the intent of building zone regulations generally that nonconforming uses should not be allowed to increase, and an extension of the space allotted to a nonconforming use is a proscribed extension of that nonconforming use and is inconsistent with the policy and comprehensive plan of the regulations. The obvious purpose and effect of the conditions and safeguards imposed by the board in this case, taken in conjunction with the approval of the special exception which was sought, was to permit an extension of the nonconforming use which the club was already making of its existing property to the new land which was proposed to be added. The only effort was to confine the magnitude of that use to its present limits. Subject only to that restriction, the board allowed the nonconforming use to be expanded over the larger area.

(Internal citations omitted) Id. at 462.

The present matter is similar to Raffaele in that, even if Aradev satisfies the special exception criteria set forth in the Regulations, (which its current Application does not) the crux of the special exception application submitted seeks to expand a non-conforming use. In fact, Aradev proposed to expand the Wake Robin Inn to a far

greater extent than that proposed in Raffaele, where the club only sought to create a larger parking lot and protect its land from rough seas in the Long Island Sound. Going far beyond the scope of expansion before the Raffaele Court, in the present matter Aradev seeks to construct 15 additional hotel rooms via a three-story addition to the existing Inn, an event space, four freestanding cottages, a fast and casual restaurant and bar, and an indoor spa and gym area. Even if the Commission imposed limitations on the proposed expansion, as articulated by the Connecticut Supreme Court in Raffaele, the granting of the special exception would still be reversible error because it would permit an expansion of a non-conforming use.

The foregoing makes clear that the proposed addition to the Wake Robin Inn violates both the Regulations and well established Connecticut law. The inescapable conclusion is that the proposed addition would expand a prior non-conforming structure, which is strictly prohibited and contrary to the well-established principle that seeks to eliminate, not intensify or expand, prior non-conforming structures and uses.[3]

Furthermore, the proposed addition would significantly alter the existing use of the Wake Robin Inn. The proposed addition expands the Wake Robin Inn to a 53 room

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[3] Indeed, the core principle that zoning regulations must eliminate rather than expand non-conforming uses can be seen in many cases relative to zoning variances. See for example: Munroe v. Zoning Bd. of Appeals of Town of Branford, 75 Conn.App. 796, 810-11 (2003). ("Nonconformities prevent uniformity with surrounding areas and can affect the value of neighboring property. A vertical extension of a building by adding a second story can change and affect the amount of air or light between buildings and may detract from the aesthetic value of a neighborhood. The addition of a second story is not a negligible or cosmetic change from the original nature of the nonconformity. The bulk of the building has been increased in quantity and dimension, thereby intensifying the nonconformity. The second story provides a significant additional amount of enclosed space within the confines of the nonconforming footprint, causing a substantial increase in the nonconformity.")

hotel, an event space, four cottages, a fast and casual restaurant, a bar, and a gym and spa area. The foregoing were not uses of the Wake Robin Inn at the time zoning was enacted. *See* Town of Stonington v. Liberty Ent., LLC, 24 Conn. L. Rptr. 620 (1999)(a nonconforming restaurant and lounge that was converted into a facility primarily providing entertainment with food service incidental to the entertainment was an impermissible change in a prior nonconforming use).

Therefore, the Application must be denied on the basis that it is an impermissible expansion of a prior non-conforming use.

B. Approval of the Application Would Constitute Spot Zoning.

The Application should also be denied because the effect of approval under the May 6, 2024 Amendments may constitute impermissible spot zoning. Spot zoning is not permitted in Connecticut. Gaida v. Planning & Zoning Comm'n of City of Shelton, 108 Conn.App. 19, 32 (2008). "Simply defined, spot zoning is the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood." Morningside Ass'n v. Planning & Zoning Bd. of City of Milford, 162 Conn. 154, 161 (1972). "Spot zoning is often considered impermissible because it benefits an individual property owner at the expense of the community's interest in a harmonious, comprehensive zoning plan." 131 Beach Road, LLC v. Town Planning & Zoning Comm'n of Town of Fairfield, 349 Conn. 647, 676 (2024). "If the zoning would serve the best interests of the community as a whole to permit a use of a single lot or small area in a different way than was allowed in the surrounding territory, a

commission would not be guilty of spot zoning in any sense obnoxious to the law." (Internal quotation marks omitted) Id. at 676-77. Here, approval of the Application would not meet the best interests of the community, only the best interests of the developer.

To prevail on an impermissible spot zoning argument, two elements must be satisfied: "First, the zone change must concern a small area of land...Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole." (Internal citations and quotation marks omitted) Morningside, *supra*, at 161. "The ultimate test is whether, upon the facts and circumstances before the zoning authority, the extension is, primarily, an orderly development of an existing district which serves a public need in a reasonable way or whether it is an attempt to accommodate an individual property owner." (Internal quotation marks omitted) Konigsberg v. Bd of Aldermen, 283 Conn. 553, 592-93 (2007). The change proposed here is not in harmony with the comprehensive plan of Salisbury zoning and, rather than constituting the orderly development of this district, constitutes an attempt to accommodate the developer.

Preliminarily, the Wake Robin Inn constitutes a "small property." In Damick v. Planning & Zoning Comm'n of Southington, 158 Conn. 78, 85 (1969), a change of a zone for 18.5 acres from residential to industrial use was held to be spot zoning. The Wake Robin Inn lies on a total of 11 +/- acres. As it is smaller than the property at issue

in Damick, the Wake Robin Inn would be considered small enough such that it could be subject to spot zoning.

Additionally, the second element of spot zoning is met – namely, that the proposed change is out of harmony with the comprehensive plan designed to serve the needs of the community as a whole.

The comprehensive plan is defined in General Statutes § 8-2, which states that "zoning regulations adopted shall... Be made in accordance with a comprehensive plan and in consideration of the plan of conservation and development..." (Emphasis added.) In the Connecticut Practice Series on Land Use Law, Judge Fuller states

> The plan of conservation and development or master plan is *not* the same as the comprehensive plan. The comprehensive plan evolves from the history of zoning in the town by the zoning commission as reflected in the zoning regulations and zoning map. The plan of conservation and development is a planning concept within the exclusive control of the planning commission, which is not based on existing conditions and zoning but rather is a blueprint for recommended future development of the municipality."

9 Conn. Prac., Land Use Law & Prac. § 4:4 (Fuller, 4th ed.). In stressing the central importance of the mandate that zoning regulations be adopted in accordance with the comprehensive plan, Judge Fuller states:

> The enactment of or change in zoning regulations or the boundaries of zoning districts cannot be upheld unless this [C.G.S. § 8-2] requirement is met. The basic purpose in requiring conformity with a comprehensive plan is to prevent the arbitrary, unreasonable, and discriminatory exercise of the zoning power.

9 Conn. Prac., Land Use Law & Prac. § 4:3 (Fuller, 4th ed.).

As set forth on the Zoning Map, the Wake Robin Inn is located in a residential zone, Under Salisbury's Comprehensive Plan, the Wake Robin Inn is a prior non-

conforming use as a hotel within a limited commercial use in the RR1 Zone. The proposed event space and other new uses will be an increase in a commercial use and will also increase traffic and noise in the residential zone, particularly on the weekends and at late hours of the night. This is not eliminated by the fact that guests could stay at the Inn, because there is no requirement that those who rent out the event space stay at the Inn. Similarly, the proposed expansion would allow members of the general public onto the premises to utilize a gym, spa, fast and casual restaurant, and bar. Again, there would be no requirement that patrons obtain lodging at the Inn in order to utilize these facilities. This would substantially increase traffic and noise in the local neighborhoods. The additional facilities would also increase the light generated at or by the Wake Robin Inn, which could be disruptive to neighbors at night. The increase in traffic, noise, and light, particularly at late hours of the night, is not consistent with a residential zone. The foregoing will also result in a decrease in the property values of neighboring properties. This impermissible expansion of the Wake Robin Inn's prior non-conforming use is in direct conflict with the Comprehensive Plan, which plan reflects the subject residential zone.

In similar situations, the Appellate and Supreme Court have found impermissible spot zoning to exist. For instance, in Guerriero v. Galasso, 144 Conn. 600 (1957), the Supreme Court determined that it was impermissible spot zoning for a Board of Alderman to change a zone from residential to commercial so that two adjoining

property owners could run a business from their residence. In reaching this conclusion, the Court stated:

> In each of the instant cases, what was sought, and what was granted, was an outright change from a residence zone to a business 1 zone. The necessary effect of such a change was to make each lot available for any one or more of the many uses authorized in a business 1 zone. It cannot be said that the trial court erred in concluding, in each case, that the change of zone could not be considered in conformity with the comprehensive plan of zoning for the good of the community and therefore constituted spot zoning beyond the powers of the zoning authority.

Id. at 608.

Similarly, in the present matter, the May 6, 2020 amendments of the definition of "hotel" in the Regulations appear to have been done to permit the Application under consideration. The effect of the amendments might allow Aradev's development plans, despite the Regulations and well-established law calling for prior non-conforming uses to be abated and not expanded. Guerriero, stands for the proposition that the effect of a change must be considered in determining whether spot zoning exists. Here, the effect of the amendments to the hotel zoning regulations, and approval of the application, was to benefit one property – the Wake Robin Inn. That would violate the comprehensive plan and falls squarely into the definition of spot zoning.

Similarly, in Zuckerman v. Bd. of Zoning Appeals of Town of Stratford, 144 Conn. 160 (1956), the Supreme Court held that it constituted impermissible spot zoning to change a parcel of property from a light industrial zone to a business 1 zone for the

sole purpose of permitting the property owner to open a liquor store on the premises. In reaching this conclusion, the Court stated:

> We find nothing therein to justify the planning and zoning board in wrenching out of a large industrial zone a parcel of land, 100 feet square, in order to make that parcel available for business uses. It is perfectly obvious that the change in zone was made solely for the financial advantage of the petitioner and did not serve the bests interests of the community as a whole.

Id. at 164-65. Here, it is equally clear that approval of the Application would financially advantage only the Wake Robin Inn and Aradev, LLC, while being contrary to the best interests of the community at large, especially the neighboring property owners.

The May 6, 2024 amendments, including the definition of "hotels", as discussed in Section I, *supra*, laid the foundation for the Commission to engage in spot zoning if it approves Aradev's Application. Such approval would violate well-established Connecticut law on impermissible spot zoning. Therefore, for this additional reason, the Crugers respectfully request the Commission deny the Wake Robin Inn's Special Permit Application.

C. Conclusion

For the reasons stated herein the Commission must deny Aradev's Application because doing otherwise would constitute an impermissible expansion of a non-conforming use and may violate the prohibition against spot zoning.

Perley H. *Grimes*, Esq.

Respectfully submitted,

Angela Cruger and William Cruger

Through their Attorneys,

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