Outlook

#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 /

From Terri Carlson <tcarlson@crameranderson.com>
on behalf of
Perley H. Grimes <pgrimes@cramer-anderson.com>

Date Tue 9/9/2025 1:41 PM

To Land Use <landuse@salisburyct.us>; Michael Klemens <fenbois@aol.com>

Cc candres@barclaydamon.com <candres@barclaydamon.com>; Joshua E. Mackey <jmackey@mbwlawyers.com>

1 attachment (785 KB)

Klemens ltr re nuisance .pdf;

Please file the attached in the record.

Thank you

Perley H. Grimes, Jr., Esq.
Cramer & Anderson LLP
46 West St., P.O. Box 278
Litchfield, CT 06759
Ph: 860-567-8718
Fx: 860-567-4531
Email: pgrimes@cramer-anderson.com

Perley H. Grimes, Esq.

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

September 8, 2025

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

RE: Definition of "Nuisance" and the Cambodian Buddhist Decision Where Parking is a Reason to Deny a Special Exemption Application.

Dear Chairman Klemens:

This firm represents Angela and William Cruger ("Crugers") of 86-88 Wells Hill Road, Lakeville, Connecticut, who are abutting property owners or own property within 100 feet of a prior non-conforming property and use known as the Wake Robin Inn ("WRI"). As you are aware, for over a year now, Aradev, LLC ("Aradev") has been working on obtaining the authority to expand the WRI. In particular, 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 an indoor spa and gym area. This letter addresses two issues that have recently arisen: (1) whether the noise, lighting, or other effects generated by the proposed expansion of the WRI will constitute a nuisance; and (2) whether parking for 150 to 175 cars as well as valet parking in an unknown location is not harmonious with the residential neighborhood.

Perley H. Grimes, Esq.

I. THE NOISE GENERATED BY THE WAKE ROBIN INN WILL CONSTITUTE A NUISANCE.

Section 803.2 of the Town of Salisbury Zoning Regulations ("Regulations"), pertaining to applicable standards for the approval of a special permit, provides, "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." The expansion of the WRI will undoubtedly create a nuisance by noise and partially by lighting and other effects to neighbors.

Pursuant to Pestey v. Cushman, 259 Conn. 345 (2002), whether the expansion of the WRI will constitute a nuisance to neighbors must be analyzed under a three part framework. First, the Commission must consider whether there will be an invasion of neighbors' use and enjoyment of their property. Second, the Commission must consider whether the expansion of the WRI is the proximate cause of that invasion. Third, the Commission must consider whether the expansion of the WRI will unreasonably interfere with neighbors' use and enjoyment of their property. Id. at 359.

Throughout the course of the present administrative hearings, as well as the previous administrative hearing pertaining to the first special exception application, the Planning and Zoning Commission of the Town of Salisbury ("Commission") has heard (or will hear) from experts who establish the Cruger's Property at 86-88 Wells Hill Road will experience louder noise as a result of the proposed expansion. Loud noises are a

textbook example of a nuisance. Undoubtedly, a loud noise invades the use and enjoyment of a neighboring property owner and, as presented by Bennet Brooks, the expansion of the WRI would proximately cause increased noise at the Crugers and other neighboring properties. The sole remaining question to determine under Pestey, is whether the proposed expansion would create a, nuisance, that is, is whether the interference with the Crugers use and enjoyment of their property by noise, light, and other effects would be unreasonable.

In Pestey, the Court elaborated on the requirements for determining whether an interference with the use and enjoyment of property is unreasonable. In affirming the jury instructions given at the trial-court level, which led to a finding that the operation of a dairy farm was a nuisance, the Court stated:

> Whether the interference is unreasonable depends upon a balancing of the interests involved under the circumstances of each individual case. In balancing the interests, the fact finder must take into consideration all relevant factors, including the nature of both the interfering use and the use and enjoyment invaded, the nature, extent and duration of the interference, the suitability for the locality of both the interfering conduct and the particular use and enjoyment invaded, whether the defendant is taking all feasible precautions to avoid any unnecessary interference with the plaintiff's use and enjoyment of his or her property, and any other factors that the fact finder deems relevant to the question of whether the interference is unreasonable. No one factor should dominate this balancing of interests; all relevant factors must be considered in determining whether the interference is unreasonable.

259 Conn. at 361. The Pestey case explains as follows:

Utilizing the framework set forth in Pestey, the obvious conclusion is that the proposed expansion of the Wake Robin Inn will be an unreasonable interference with

the Crugers and their neighbors' use and enjoyment of their properties. The nature of the invasion to the Crugers' use and enjoyment of their property involves loud music; loud, intoxicated individuals; parking for 150 to 175 cars; car doors slamming; and constant traffic entering and exiting the WRI. These noises invade the Crugers and their neighbors' paramount interest in the peaceful, serene, and tranquil use and enjoyment of their properties. Concerningly, the nature, extent, and duration of the interferences resulting from the increase in frequency and intensity of events is unknown. Currently, there are few, if any, such events while the WRI is operating as an Inn. As currently proposed, tented and other outdoor events bare no restrictions related to their time, days, or months of operation. Aradev's own consultant (CTA) admitted the noise from the tented events would be well in excess of its "Targeted Levels." The location of the proposed expansion in an the R-R-1 Zone renders it unreasonable, as the proposed expansion would add a fast and casual restaurant, event space, spa, gym, cottages, an outdoor swimming pool, and hotel rooms in an existing quiet, residential neighborhood.

Finally, Aradev is not taking all feasible precautions to avoid unnecessary noise interference. For example, Aradev proposes outdoor, tented events without enumerating the number, programs, times, and frequency of the events. In addition, Aradev has admitted it has not yet made plans to ensure the indoor space is used in the best way to avoid noise escaping the indoor event space. In addition, construction noise, lasting for at least two years, has not been properly addressed or mitigated by either the Application or presentations at relevant public hearings. Facially, the factors considered

in determining whether a proposed use of land unreasonably interferes with the use and enjoyment of a neighboring property unequivocally demonstrate that the proposed expansion of the WRI is an unreasonable interference with the use and enjoyment of the Crugers, and neighbors, properties and constitutes a nuisance.

The proposed expansion functions to expand what is currently a quiet country inn into a significantly larger boutique hotel with an event venue, a fast and casual restaurant and bar, an outdoor pool, four 2000 SF cottages, a gym, and a spa. All of the foregoing would occur in a quiet residential neighborhood zoned as RR-1. In addition, outdoor tented space would be used for weddings and various other undescribed activities, for an unknown number of hours, at an unknown frequency of events. Event attendees and party goers would be making noises until late hours of the night, car doors would be slamming as people leave the grounds at the conclusion of an event or after drinking at the bar. Even if Aradev has taken action to reduce the noise impact, there is no way to mitigate the noise intrusions that will flow to neighboring properties.

Although the expanded WRI may be a profitmaking enterprise providing entertainment and other events, the court is clear in Esposito v. New Britain Baseball Club, Inc., 49 Conn. Supp. 509, 524–25, that such possible profits do not supersede the harm neighbors will suffer due to the increased noise. Unlike in Esposito where the increased noise was narrowly-confined to 13 days a year, in the present matter there are multiple daily uses contemplated that will occur year round,, , for various lengths of time, and at various times throughout the day and night. In fact, the outdoor seasonal

pool will have continuous daily background noise. The outdoor tented events are not specified as to the number of events, hours, noise levels, or number of persons attending. There is no limitation on the number of tented events, their purposes, or their hours. Considering all these multiple uses, as described herein, are other effects which will interfere with the surrounding neighbors' use and enjoyment of their property for 365 days a year rather than the 13 days in the Esposito case.

Furthermore, the court in Pestey stated:

> [W]hile an unreasonable use and an unreasonable interference often coexist, the two concepts are not equivalent, and it is possible to prove that a defendant's use of his property, while reasonable, nonetheless constitutes a common-law private nuisance because it unreasonably interferes with the use of property by another person. That was the situation in Walsh v. Stonington Water Pollution Control Authority, [250 Conn. 443, 445, 736 A.2d 811, 813 (1999)].
>
> In Walsh, this court rejected the defendants' argument on appeal that their operation of the wastewater treatment plant in question could not constitute a nuisance since the operation of such a plant was clearly a reasonable use of property. This court held that the production of odors by the defendants' plant could constitute a nuisance, notwithstanding the fact that operating a wastewater treatment plant was clearly a reasonable use of the property in question. Although the proposition was not stated expressly in Walsh, our holding in that case demonstrates that, while the reasonableness of a defendant's conduct is a factor in determining whether an interference is unreasonable, it is not an independent element that must be proven in order to prevail in all private nuisance causes of action. The inquiry is cast more appropriately as whether the defendant's conduct unreasonably interfered with the plaintiff's use and enjoyment of his or her land rather than whether the defendant's conduct was itself unreasonable. The proper focus of a private nuisance claim for damages, therefore, is whether a defendant's conduct, i.e., his or her use of his or her property, causes an unreasonable interference with the plaintiff's use and enjoyment of his or her property.

> On the basis of our reexamination of our case law and upon our review of private nuisance law as described by the leading authorities, we adopt the basic principles of § 822 of the Restatement (Second) of Torts and conclude that in order to recover damages in a common-law private nuisance cause of action, a plaintiff must show 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.
>
> (Internal citations omitted.) Pestey, 259 Conn. at 359–61.
>
> Again, Section 803.2 of the Regulations provides as follows:
>
> 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.

Nuisances have been found in cases not only related to noise, but also air or water pollution, offensive odors, dust, smoke, vibrations, lighting, or other effects. *See e.g.*, Pestey v. Cushman, 26 Conn. L. Rptr. 387 (Conn. Super. Ct. Jan. 28, 2000)(Wherein, the Superior Court held, and the Supreme Court affirmed, a finding that the odors emanating from a dairy farm constituted a nuisance); Pomazi v. Holmes, 2012 WL 6118852 No. CV09-5008378S (Conn. Super. Ct. Aug. 19, 2011)(Erection of manure-based planting bed and keeping of animals on adjacent property, thereby creating noxious odors, contaminating ground water, and risking health constituted a nuisance); Morytko v. Westford, 2005 WL 1524799 No. CV04-400600S (Conn. Super. Ct. May 31, 2005)(Granting a temporary injunction on the basis that neighbors placement of livestock constituted a nuisance);Kores v. Calo, 2008 WL 4151658 No. CV06-500359S

Perley H. Grimes, Esq.

(Conn. Super. Ct. Aug. 20, 2008)(Holding that a neighbor created a nuisance by parking his camper in front of the plaintiff's house for two years thereby preventing the plaintiff from selling his house); Borg v. Cloutier, 2018 WL 11240698 No. CV166028856S (Conn. Super. Ct. Aug. 23, 2018)(finding a nuisance based on bright lights); Eastman v. Lawton, 2025 WL 1639189, No. NNH-CV23-5057507S (Conn. Super. Ct. Jun. 3, 2025)(same).

All of the foregoing examples of interferences with property are milder than those the Crugers and other neighbors will suffer if the expansion of WRI is permitted and additional uses proposed are allowed via the current special exception application. For all of the foregoing reasons, the noise, lighting, and other effects generated by the proposed expansion of the WRI will be adverse to the neighbors' quiet enjoyment and create an unreasonable interference with neighbors uses and enjoyment of their properties and homes, i.e. nuisances to the neighbors.

II. PARKING FOR 150 TO 175 CARS AS WELL AS VALET PARKING IN AN UNKNOWN LOCATION ON OR OFF THE PROPERTY IS INHARMONIOUS WITH THE NEIGHBORHOOD.

Aradev's second special permit application should also be denied on the basis that parking for 150 to 175 cars, plus additional valet parking at unknown locations, perhaps closer to neighbors' properties, is not harmonious with a quiet residential neighborhood. "[W]hen a use is not allowed as of right, but only by special exception, the zoning commission is required to judge whether any concerns, such as parking or traffic congestion, would adversely impact the surrounding neighborhood." (Internal

quotation marks omitted) Cambodian Buddhist Soc. Of Connecticut, Inc. v. Planning and Zoning Comm'n of Town of Newtown, 285 Conn. 381, 432 (2008). "The reason for this requirement is that, although such [religious] uses are not as intrusive as commercial uses[,] they do generate parking and traffic problems that, if not properly planned for, might undermine the residential character of the neighborhood." (Internal quotation marks omitted) Id. at 432-33.

Section 803.3 of the Regulations – Neighboring Properties – provides as follows:

> 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.

Here, there will be parking for 150 to 175 cars. This expanded parking would be adverse to the current WRI use. Aradev has presented no hard data relating to the level of traffic and parking WRI has experienced over the past five or ten years. Given the proposed parking will be many times greater than WRI's historical parking capacity, and because of the significant increase of multiple uses and much more frequent use of the property, the same problems as found in the Cambodian Buddhist case will arise.

In the present matter, the WRI is a prior non-conforming hotel within a residential zone. Aradev's proposed development would expand the existing building by nearly three times its current square footage and add an event space, four freestanding

cottages, a fast and casual restaurant, an outdoor pool, and an indoor spa and gym area, thereby increasing the intrusiveness of the existing commercial use, increasing the parking and traffic problems, and undermining the residential character of the neighborhood.

In Cambodian Buddhist Soc., the Newtown Planning and Zoning Commission denied a special exception application for the operation of a Buddhist temple on a ten-acre lot containing two acres of wetlands and a three acre pond in a farming and residential zone wherein places of religious worship were permitted by special exception, concluding that:

> [A] 7,618 square foot building, including a 1,618 square foot meditation temple and a 6,000 square foot meeting hall, with 148 parking places to accommodate 450 society members at five major Buddhist festivals annually...was inconsistent with a quiet single-family residential neighborhood with a rural setting and, therefore, did not meet §8.04.710 of the Newtown zoning regulations..., which requires that the proposed use shall be in harmony with the general character of the neighborhood.

Id. at 386-87. On appeal, the Connecticut Supreme Court affirmed the denial of the special exception application, stating:

> [T]he commission reasonably could have concluded that a parking lot for 148 cars would be a significant source of noise and disruption in the neighborhood. We conclude that this evidence supported the conclusion that the activities at the proposed temple would cause a significantly greater disruption to the neighborhood than any permitted use of the property would, and, therefore, the proposed use clearly was not in harmony with the general character of the neighborhood. (Emphasis added.)

Id. at 440.

In the present matter, the Town of Salisbury has a similar regulation to §8.04.710 of the Town of Newtown's zoning regulations, addressed in the Cambodian Buddhist Soc. Case. Specifically, §803.2 of the Town of Salisbury Zoning Regulations requires that "the proposed project or development shall be related harmoniously to the use, scale, and siting of existing buildings in the vicinity of the site." (Emphasis Added). Finally, §803.3 of the Town of Salisbury Zoning Regulations provides:

> 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. (Emphasis Added).

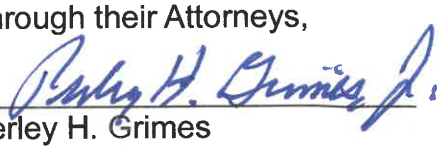
The zoning regulations of the Town of Newtown at issue in the Cambodian Buddhist Soc. case are similar to the Regulations at issue in the present case. This similarity compels the conclusion that the proposed expansion of the WRI would be inharmonious with the residential neighborhood surrounding the WRI. In the present matter, Aradev seeks to utilize more parking spaces than that proposed by the applicant in the Cambodian Buddhist Soc. case. In addition to this increase in parking spaces, Aradev plans to have valet parking available, the specifics of which are unclear. Valet parking was not proposed in the Cambodian Buddhist Soc. case. Nevertheless, the Planning and Zoning Commission of the Town of Newtown determined, and the Supreme Court of the State of Connecticut affirmed, that the proposed parking would be inharmonious with a residential neighborhood. The same conclusion is required in this

case given the similarity of the Town of Newtown and the Town of Salisbury's zoning regulations and the location of the subject properties both being in a residential zone.

III. CONCLUSION

This memo only discusses two more of the many reasons why the Commission must deny Aradev's special exception application. First, Aradev's second special permit application must be denied as the noise, lighting, and other effects generated by the proposed expansion will disturb the peace of the quiet residential neighborhood surrounding the WRI, thereby creating a nuisance. Second, the expansive parking requirements will be inharmonious with the surrounding residential zone. These two reasons only further add to the multitude of reasons already presented to the Commission in the form of public comments, petitions, and letters, submitted in the record of the first and second hearing, the combined effect of which leads to the unavoidable conclusion that the subject application must be denied.

Respectfully Submitted,
Angela and William Cruger
Through their Attorneys,



Perley H. Grimes
Cramer & Anderson, LLP
46 West Street
Litchfield, CT 06759
860-567-8718
pgrimes@crameranderson.com