

MEMORANDUM

To: New Canaan Planning & Zoning Commission
From: Amy E. Souchuns, Esq.
Attorney for Jennifer Holme & David Markatos, 1328 Smith Ridge Rd.
Date: April 18, 2017
Re: Grace Farms Foundation Special Permit Applications

In its Memorandum dated April 13, 2017 (“Reply Memo”) in response to our December 20, 2016 and March 20, 2017 Memoranda (“Principal Use Memos”), Grace Farms Foundation, Inc. (“Foundation”) continues to downplay the threshold issue of whether New Canaan’s Zoning Regulations (“Regulations”) allow for multiple, contemporaneous principal uses on a single property in the town’s 4-acre residential zone, the lowest density zone in New Canaan. The Foundation’s approach remains fundamentally flawed in its failure to distinguish between the nature of use (principal v. accessory) sought or approved as a special permit. While a complete legal analysis addressing the case law and arguments will be forthcoming, the purpose of this Memorandum is to provide a brief, plain language response to a number of the issues outlined in the Reply Memo in advance of the April 25, 2017 public hearing.

At the outset, it bears repeating that “Principal Use” is clearly defined in the Regulations as “the primary or predominant use of any lot or building.” Common sense dictates that there can be only one principal, dominant use on a lot. As described in detail in our April 13, 2017 Memorandum (“April Memo”), the number of visitors that have participated in Religious Institution, Club, or Philanthropic activities at Grace Farms to date confirms beyond any doubt that these uses, as proposed by the Foundation in its Renewed Application, are each separate and independent principal uses, and are not incidental or subordinate to, or dependent upon any other use. In other words, as proposed by the Foundation, none of the three uses can be deemed accessory uses. The Foundation admitted as much to the Commission at the November 29, 2016 public hearing. The attached chart breaks down the Foundation’s proposed principal uses at Grace Farms as well as the typical accessory uses for each of those principal uses.

The Foundation continues to argue that the number of uses is subsumed within the special permit criteria set forth in the Regulations. But this position overlooks the fact that before the Commission can turn to any evaluation of the special permit criteria contained in § 8.2.B.4 of the Regulations, it must first determine whether the application “is in conformance with the

applicable provisions of these Regulations....” Regulations § 8.2.B.3.c.i. Only then can it evaluate whether the application meets the special permit criteria. Regulations § 8.2.B.3.c.ii. Simply put, in the event the Commission were to determine that multiple principal uses are not permitted in the 4 Acre Residence Zone, the Commission never needs to evaluate the special permit criteria because the application is not in conformance with the Regulations.¹

In the absence of an express provision in the Regulations authorizing multiple principal uses in the Residence Zones, and given the definition of “Principal Use,” the Commission cannot legally read a provision into the Residence Zones to allow multiple, contemporaneous principal uses at Grace Farms. In this regard, it is important to note that in Connecticut towns where multiple principal uses are permitted, the zoning regulations are explicit on this point. See, for example, the Regulations of the Towns of Bethel, Killingworth, Old Lyme and Westbrook. Exhibit B to March Principal Use Memo. The Foundation continues to disregard the distinction in the Regulations (specifically §§ 3.2 and 3.3) between principal uses allowed by special permit and accessory uses allowed by special permit, instead melding them into a generic “special permit uses” reference. This conflation facilitates the Foundation’s insistence that the Commission has a “long-standing practice of allowing more than one Special Permit use at the same time on a single parcel.” Our Principal Use Memos do not dispute the fact that multiple special permits can be issued for the same property; the dispute lies in whether those multiple special permits are for principal uses or accessory uses.

As detailed in our April Memo, our analysis of the town’s master file has not revealed any approval for multiple, contemporaneous principal use special permits on a single lot in the 4 Acre Residence Zone since 1960 when records were first maintained. This analysis aligns with general common sense. To put this into context, we do not believe this Commission would allow for St. Luke’s School to build a for-profit commercial conference facility open to the general public on its campus, or the New Canaan Country Club to build a community church on its grounds, or the Glass House to operate a destination restaurant on its property. Each of those contemporaneous, principal uses would overwhelm the surrounding neighborhood.

¹ Given the intimations in the Reply Memo that the principal use argument is the only objection to the Renewed Application, my clients also dispute that the Renewed Application satisfies the special permit criteria for substantive reasons as outlined in the April Memo and as will be presented during the public hearing.

Despite its burden of proof, the Foundation itself offers no definitive evidence either, instead relying on examples of intensifying an existing single principal use such as “municipal facilities” or adding accessory uses – not new additional principal uses – to each lot such as a nursery school to a church. As our April Memo documents, that is the case as well with the New Canaan Country Club and St. Luke’s School, the two other institutional uses in New Canaan’s 4 Acre Residence Zone. There is no “time-tested” interpretation of this Commission regarding multiple, contemporaneous Principal Uses upon which to afford any deference.

Finally, the Foundation’s repeated assertions that “...no result other than the Opposition’s position and complete defeat of the Foundation will satisfy [my clients]...” are completely false. As with any other applicant to this Commission, my clients are simply asking for the Foundation to conform its activities to the Regulations and/or the 2013 Approval, and for this Commission to hold the Foundation to the same standards as every applicant for a special permit use in New Canaan.

Confronted in the Renewed Application with an unprecedented request to conduct multiple, contemporaneous principal uses in the lowest density residential zone in New Canaan, this Commission must direct the Foundation to identify the single principal use that it intends to operate at Grace Farms and determine which accessory uses are related to that principal use, or otherwise deny the Renewed Application and direct the Town Planner to enforce the conditions of the 2013 Approval for a Religious Institution. The Foundation, after determining its one principal use at Grace Farms, can relocate the other principal uses to the appropriately zoned location for those activities in New Canaan in compliance with the Regulations and Plan of Conservation and Development.

Principal Uses

Club Organizations

Primary/Predominant Use

Commercial Conference Center
Use by for profit and non profits (Space Grant Program - 50+)

Examples: Galas (Mounted Troop, NC Country Day, Creative Connections Gala, Awards Benefit for Silvermine Arts Guild), Norwalk Community College Offsite, Space Grant Lectures and Meetings (Large/Small), Arts for Healing, Chanel Photo Location Shoots, NC Historical Society Symposium,

Accessory Uses

General Public Usage, Restaurant, Park (Walking Trails, Fishing etc.), Athletic Events, Library, Tea Service, Movie Theater (Saturdays), Training, Concerts

Examples: Earth Day, Winter Outing, Basketball, Volleyball, Saturday Family Matinee (Movie), Community Dinner, Fairytale Fridays, Interfaith Seder, Tai Chai, Yoga Classes, Junior Chefs Cooking Classes, Open Arts for Kids, Chess Tournament, Mark Fowler Backyard Explorers, Preschool Poetry, Book Club, Self Defensive Training, Aloe Blanc and Paul Taylor Concert, Acoustic Concerts, Community Garden

Volume

79,681 (Year 1),
126,458 - 245,141 (Year 2 to Year 5)

Philanthropic and Eleemosynary Institution

Primary/Predominant Use

Large/Small conferences supporting foundation initiatives

Examples: United Nations Conference on Sex Trafficking, Climate Change and Modern Slavery Lecture, 9/11 Remembrance Conference, Practicing Series - Art/Performance Series and workshops (Awe, Empathy, Silence), Conversations with Greg Zehner

Accessory Uses

Architecture Tours, One Day Events, Book Launches (Sex Trafficking), Movie Premieres, Foundation Fundraising, Education, Training,

Examples: River Walk & Tea, Anniversary Celebration, Joint Tours with Glass House, United Nations University, Movie Premiere sand discussions, Yale Faith and Culture Collaboration - Life Worth Living, Monthly Training on Trafficking Software, Art Installations, One day architectural study of Glass House and River

Volume

32, 318 (Year 1),
63,201 - 108,583 (Year 2 to Year 5)

Religious Institution

Primary/Predominant Use

Religious Services

Examples: (Sunday and Special Events (Easter, Christmas Eve etc.)

Accessory Uses

Ministries, Athletics, Youth Events, Community Service, Counseling

Examples: Amazing Grace AA Meetings, Women's Morning Bible Study, Alpha Series, Men's Morning Bible Study, Love & Marriage Course, Pickup basketball, Youth Volleyball, Story Time with Miss Adrienne, Kids Club, Pura Vida, Midnight Run

Volume

74, 561 (Year 1),
81,742 - 133,183 (Year 2 to Year 5)