

VIA ELECTRONIC MAIL and U.S. MAIL

April 28, 2017

John Goodwin, Chairman
Planning and Zoning Commission (the "Commission")
Town of New Canaan
Town Hall
77 Main Street
New Canaan, CT 06840

RECEIVED

APR 28 2017

NEW CANAAN
PLANNING & ZONING

Re: **Renewed Application of Grace Farms Foundation, Inc.
for Second Amended Special Permit
and Regulation Amendment Application
365 Lukes Wood Road, New Canaan, Connecticut**

Dear Chairman Goodwin:

This firm represents Grace Farms Foundation, Inc. (the "Foundation"), the owner of the property at 365 Lukes Wood Road, New Canaan, CT ("Grace Farms"). This letter is written (i) to re-file the Foundation's "Renewed Application for Second Amended Special Permit" ("Renewed Application"), which was filed on March 27, 2017 and provisionally withdrawn on April 21, 2017, as described below; and (ii) to file a Regulation Amendment Application on behalf of the Foundation.

In December 2016, when the Foundation's "Application for Second Amended Special Permit and Response to Questions from Town Planner/Sr. Zoning Enforcement Official" ("2016 Application") was pending before the Commission, opponents of the application raised the "legal issue" that a single parcel may not have more than one principal special permit use under the Town of New Canaan Zoning Regulations ("Zoning Regulations"). The Foundation rebutted this suggestion with legal analysis in a memorandum dated January 19, 2017 and a table with examples of the Commission's practice over the years of allowing more than one principal use by special permit. Thereafter, because the statutory timeframe for the Commission to conclude public hearings on the 2016 Application – during which there was sure to be debate on this "legal issue," among other things – and then deliberate and decide, could likely not be met, the Foundation withdrew the 2016 Application and filed the Renewed Application on March 27, 2017.

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On March 20, 2017, just prior to the Foundation filing its Renewed Application, opponents to the Foundation filed a memorandum once again addressing the above-described “legal issue.” On April 13, 2017, the Foundation filed its detailed legal analysis in reply, showing that Connecticut case law, a fair reading of the Zoning Regulations, and, again, numerous examples of the Commission’s prior practice, supported its view.

In the face of this debate, on April 21, 2017, anticipating the scheduled public hearing on April 25, 2017, Commission counsel Ira Bloom conferred with Town Planner Steve Palmer and the undersigned counsel for the Foundation. Mr. Bloom recommended that the Foundation withdraw the Renewed Application and re-file it with a Regulation Amendment Application to address the “legal issue.” Attorney Bloom explained that the Regulation Amendment Application may help clarify for the Commission its authority to approve more than one principal special permit use on a single property. This discussion informed the decision by the Foundation to accede to Mr. Bloom’s recommendation of withdrawal, all as stated in the Foundation’s letter of April 25, 2017 (attached hereto).

The Foundation still maintains that, as shown in its research of other properties and uses in Town, multiple principal special permit uses are, and have been historically, permitted by the Commission under its Zoning Regulations, including the ones currently in effect. However, the Foundation has agreed to file a Regulation Amendment Application in order to facilitate the progress of its Renewed Application through the Commission, and in deference to the views of the Commission’s counsel and Town Planner. This week, the Foundation had preliminary discussions with the Mr. Palmer regarding the text changes proposed in its Regulation Amendment Application. The Foundation is confident that these changes are prudent and will not adversely impact any other provisions of the Zoning Regulations, or other zoning districts in Town.

I. Re-Filing the Foundation’s Renewed Application

In light of the foregoing, by way of this letter, the Foundation respectfully re-files the Renewed Application, expressly incorporating by reference the entire file of the Renewed Application, including all materials incorporated therein.

II. Regulation Amendment Application

Also in light of the foregoing, the Foundation respectfully submits this letter as its Regulation Amendment Application, in accordance with Article 8, Section 8.2.C of the Zoning

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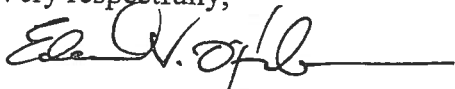
Regulations. The Foundation, as the owner of real property at 365 Lukes Wood Road in New Canaan, is eligible to apply for a Regulation Amendment under Section 8.2.C.1.d. Furthermore, in accordance with Section 8.2.C.1.b, the Foundation has attached two "Proposed Text Changes to the New Canaan Zoning Regulations" (the "Proposed Amendments"), which set forth (i) the precise wording of the applicable existing sections of the Zoning Regulations, (ii) the Foundation's proposed text changes to each, and (iii) the reason each proposed change has been requested (attached hereto). Together, this Letter and the Proposed Amendments constitute the Foundation's Regulation Amendment Application. Finally, as required, twelve (12) copies of the Regulation Amendment Application are included.

As described in the Proposed Amendments, the two suggested text changes are consistent with the purposes of the Zoning Regulations. These changes make clear in the definition of "Use" in Article 2 and in the list of special permit principal uses in Article 3 that the number of uses that may be approved by special permit on any single lot or building is not limited arbitrarily to one, but will be determined as part of the substantive review required by Article 8, Section 8 of the Zoning Regulations.

The Foundation respectfully requests that the Re-Filed Renewed Application, including the Proposed Text Changes to the New Canaan Zoning Regulations, be put on the Commission's May 30, 2017 regular meeting agenda for public hearing.

Thank you for your consideration of these matters. If you require any additional information, please do not hesitate to contact me.

Very respectfully,



Edward V. O'Hanlan

Enclosures (12 sets)

Copy to: Steve Palmer, Town Planner
Grace Farms Foundation, Inc.

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VIA ELECTRONIC MAIL and U.S. MAIL

Steve.Palmer@newcanaanct.gov

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April 25, 2017

Mr. Steve Palmer
Town Planner
New Canaan Town Hall
77 Main Street
New Canaan, CT 06840

**Re: Grace Farms Foundation, Inc. ("Foundation")
365 Lukes Wood Road, New Canaan, Connecticut
Withdrawal of Renewed Application**

Dear Mr. Palmer:

This letter is written to confirm what was discussed between you, Planning & Zoning Commission counsel Ira Bloom, and me by telephone on Friday afternoon, April 21, 2017.

Attorney Bloom requested that the Foundation consider withdrawing its pending "Renewed Application" dated March 27, 2017, and re-filing it with a text change application to address the legal issue of more than one principal use allowed under special permit on a single property, that has been raised by counsel for opponents to the Foundation, and that both sides have addressed in extensive legal briefs over the last few weeks.

Attorney Bloom explained that withdrawing and re-filing with a text change proposal can help clarify the authority of the Commission, and avoid this legal issue distracting the Commission from the special permit considerations under review.

After consultation with our client, I called back to indicate that the Foundation would agree to withdraw and to re-file the Renewed Application, with a text change application, in order to facilitate the progress of its application through the Commission. As we discussed, by so doing the Foundation does not concede that its legal position on multiple principal uses is in error, or that its opponents' views are correct; indeed, we do not.

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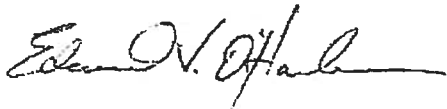
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The Foundation intends to submit a letter re-filing the Renewed Application and application for a text change by April 28, 2017. It is my understanding that a public hearing on both the Renewed Application and text change could be held at the May 25, 2017 Commission meeting.

Thank you for the courtesies of sharing your views and discussing these issues with me. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward V. O'Hanlan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edward V. O'Hanlan

EVO'H/jh

**PROPOSED TEXT CHANGES TO THE
NEW CANAAN ZONING REGULATIONS
(eff. June 16, 2007)**

I. FIRST PROPOSED TEXT CHANGE

a. Existing Text of Regulation:

Section 2.2 Defined Terms [p. 37]

Use –
...

Use, Principal --The primary or predominant use of any lot or building.

b. Proposed Text Change (Highlighted in Yellow)

Section 2.2 Defined Terms [p. 37]

Use –
...

Use, Principal --The primary or predominant use(s) of any lot or building.

Reason for proposed change

The change is proposed to remove any suggestion in the existing definition text that the use of the singular number is a substantive limitation on the number of principal uses that may exist or be approved by special permit on any single lot or building.

This change is consistent with Article 2, Section 2.1.B.3.b, which provides that the singular and plural number may be interchanged within the context of a Regulation provision to effect the purpose of the Zoning Regulations. It also ensures this definition will not be used contrary to the actual language of Article 3 Section 3.2.C, which lists twenty-two (22) separate principal uses that may be allowed by special permit, and specifies the very few among these that may be the sole use allowed on the lot. Finally, it ensures that this definition will not be applied to override or constrain full application of the very detailed “Decision Considerations” and “Special Permit Criteria” set forth in Article 8, Section 8.2.B.3 and -4, respectively, which prescribe the analysis to be applied to proposed special permit uses and which contain no limitation on the number of principal uses that may be allowed.

II. SECOND PROPOSED TEXT CHANGE

a. Existing Text of Regulation:

Section 3.2 PERMITTED PRINCIPAL USES & STRUCTURES (p. 42)

...

C. Permitted by Special Permit

b. Proposed Text Change (Highlighted in Yellow)

Section 3.2 PERMITTED PRINCIPAL USES & STRUCTURES (p. 42)

...

C. Permitted by Special Permit. One or more of the following permitted principal uses may be allowed by the Commission under the procedures and criteria set forth for special permits in Section 8, below.

Reason for proposed change

This proposed change is intended to provide an explanatory note to the list of twenty-two (22) principal uses that may be permitted by special permit in Article 3, Section 3.2.C. The explanatory note makes clear that the number of principal uses that may be allowed on a single lot is not arbitrarily constrained, and that the Commission is free to permit one or more of the listed uses, consistent with the detailed “Decision Considerations” and “Special Permit Criteria” set forth in Article 8, Section 8.2.B.3 and -.4, respectively, which prescribe the analysis to be applied to proposed special permit uses and which contain no limitation on the number of principal uses that may be allowed.

Neither this proposed change nor the proposed change to the definition of “principal use”, above, seeks to increase the principal uses that may be allowed by special permit under Article 3 Section 3.2.C, or to modify in any way the substance of the “Decision Considerations” and “Special Permit Criteria” set forth in Article 8, Section 8.2.B.3 and -.4, respectively.