DONALD J. POLAND, PHD, AICP, CZEO

SENIOR VICE PRESIDENT AND MANAGING DIRECTOR, URBAN PLANNING

PHONE: 860.655.6897 – E-MAIL: dpoland@gomanyork.com – www.gomanyork.com

May 15, 2017

Mr. John H. Goodwin, Chairman
Planning and Zoning Commission
Town Hall
77 Main Street
New Canaan, CT 06840

Re: Grace Farms Foundation -- Regulation (text) Amendment Application

Dear Chairman Goodwin and Commissioners:

This letter has been prepared at the request of Jennifer Holme and David Markatos who are the owners of 1328 Smith Ridge Road and abutting neighbors to Grace Farms. I submit this letter as testimony regarding the above-captioned application to amend Article II, Section 2.2 (Defined Terms) and Article III, Section 3.2.C (Permitted by Special Permit) of New Canaan's Zoning Regulations (the "Application").

Having reviewed the Application and considered it in the context of the prior and pending Grace Farms Foundation applications for Special Permits, I am concerned the proposed regulation amendment creates greater problems for the community than the problem it seeks to solve for the applicant. While innocuous at first blush, the Application has dramatic implications and negative ramifications for the community of New Canaan. Changing the definition of principal use to allow multiple principal uses is a dramatic change that will have significant impacts on provisions throughout the New Canaan Zoning Regulations. In addition, this proposed change conflicts with the Comprehensive Plan of Zoning and ignores the concerns and recommendations of the New Canaan Plan of Conservation and Development. Granting this Application will only exacerbate the issues of appropriate scale, intensity of use, and threats of encroachment across all zones – residential and commercial -- in New Canaan. Therefore, it is my professional opinion that this Application should be denied.

I. Application Request

The Application seeks to make changes to Article II, Section 2.2 (Defined Terms) and Article III, Section 3.2.C (Permitted by Special Permit). Those specific changes are proposed as follows:

> **Article II Definitions, Section 2.2 Defined Terms:** the Application seeks to change the definition of "Use, Principal – the primary or predominate use of any lot or building" to "Use, Principal – the primary or predominate use(s) (emphasis added) of any lot or building." This amendment effectively changes the singular allowance of one principal use to the plural allowance of principal uses—multiple principal uses on a single lot.

DONALD J. POLAND, PHD, AICP, CZEO
SENIOR VICE PRESIDENT AND MANAGING DIRECTOR, URBAN PLANNING
PHONE: 860.655.6897 – E-MAIL: dpoland@gomanyork.com – www.gomanyork.com

Article III Residence Zones, Section 3.2.C Permitted by Special Permit: the Application seeks to add a sentence that states, "One or more of the following permitted principal uses may be allowed by the Commission under the procedures and criteria set forth the special permits in Section 8, below." Essentially, this sentence confirms and asserts the Article II definition change that allows multiple principal uses on single lot.

The applicant asserts the proposed amendment to Section 2.2 (Use, Principal) 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." The applicant also asserts this change "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 that very few among these that may be the sole use allowed on the lot." Finally, the applicant asserts that "it ensures that this definition will not be applied to override or constrain the 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."

The applicant further asserts the proposed amendment to Section 3.2.C (Permitted by Special Permit) "is intended to provide an explanatory note to the list of the twenty-two (22) principal uses that may be permitted by special permit in Article 3, Section 3.2.C" and "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 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."

II. Ramifications of Application

Notwithstanding the applicant's bald assertions and explanations, as drafted and proposed, these seemingly minor amendments to the Zoning Regulations have far greater implications and negative ramifications than the Application addresses. For example, if the proposed regulation amendment is approved, not only can Grace Farms Foundation be allowed to continue its request for multiple principal uses, but also could subsequently apply for additional principal uses, such as Elderly Housing, Adult Housing, Congregate Care, Bed and Breakfast, Private School, Day Care, and Private Recreation. In fact, the critical point is that the same is true of any property in a Residence Zone—institutional or not. This is important to understand. If the Application is approved, it is not simply the Grace Farms Foundation and the Grace Farms site that is afforded these new liberties of multiple principal uses on single lot or parcel of land. The proposed regulation amendment will apply to all properties in the Residence Zones. Therefore, any owner of residentially zoned property could apply for multiple principal uses on their site—including all institutional uses. This request for such a significant change should raise many concerns and questions as to how the Zoning Regulations and specific provisions will be applied and allowed if the Application is approved. For example, if any parcel/lot is allowed multiple principal uses, will it now be possible to have

more than one single-family dwelling on a residential lot? As proposed, the amendment does not prohibit multiples of the same principal use, and single-family dwellings are allowed as-of-right, without the protection or discretion of the special permit procedures and criteria. Therefore, it is conceivable that property owners could propose a development of two, ten, twenty, or more single-family dwellings (two, ten, twenty, or more principal uses) on a single parcel/lot, as-of-right, arguably in conflict with the subdivision regulations.

The proposed change to allow multiple principal uses raises more questions (as described above and below) and does not make the Zoning Regulation clearer or provide greater clarity as to the authority of the Commission. Instead, the proposed change allowing multiple principal uses creates greater ambiguity as to interpretation and allows for new land use practices that contradict the long standing practices of New Canaan. The Zoning Regulations do in fact address multiple principal uses which are permitted in New Canaan's business zone (in the form of mixed use), whereas only one principal use is allowed in the residence zones.

Another example of concern would be how to apply the density provisions of specific principal uses when two or more principal uses are allowed on a site, such as if a Congregate Care facility is allow on a lot with a Nursing Home (two similar principal uses that are often co-located). How would the per acre density requirements be applied (allocated) to Nursing Home (20 beds per acre) versus Congregate Care (no more than twice the number of congregate units per acre of buildable land allowed in the zone and where an assisted living unit shall equate to 0.5 congregate units and skilled nursing accommodations shall equate to 0.25 congregate units)?

The proposed change to the principal use definition is so broad that it will apply to all properties, in all zones, and all principal uses. By changing the definition of principal use to principal uses, the proposed amendment allows multiple principal uses on any lot in any zone. This means the change also applies to commercial zones/property and as-of-right uses without the protection of the special permit procedures and criteria. As yet another example, the Business B Zone (Section 4.5) allows Automotive Services (Section 4.5.C.13) as-of-right (by Site Plan). The Business B Zone also allows New Car Sales (Section 4.5.C.14) "provided there are no on-site repairs" as-of-right. If the proposed regulation amendment is adopted and principal use is changed to principal uses, an automotive dealership in the Business B Zone that is currently not allowed to have a service centers, would be allowed to add a service center as-of-right. In fact, said dealership would also be allowed to add (and combine) any of the eighteen (18) as-of-right uses allowed in the zone on the one parcel/site. Furthermore, if said dealership wanted, it could also apply for a special permit or special permits to allow any of the ten (10) special permit uses on the parcel/site. Changing the definition of principal use to principal uses is meaningful, significant, and dramatic as to how New Canaan interprets, administers, and allows principal uses and the provisions related to the principal uses.

DONALD J. POLAND, PHD, AICP, CZEO
SENIOR VICE PRESIDENT AND MANAGING DIRECTOR, URBAN PLANNING
PHONE: 860.655.6897 – E-MAIL: dpoland@gomanyork.com – www.gomanyork.com

III. Comprehensive Plan of Zoning and Plan of Conservation and Development

Such a significant change to the principal use definition should not be taken lightly, as its effects will cascade through the entire Zoning Regulations. In fact, such a significant change raises concerns regarding the New Canaan Comprehensive Plan of Zoning. The State of Connecticut defines the Comprehensive Plan of Zoning to be the zoning regulations and zoning map *as a collective document that sets forth the community's future development plan*. *Said comprehensive plan provides property owners with a reasonable expectation for the present and future use of land within given districts.* While communities and zoning do evolve over time, planning and zoning commissions should be cautious when making changes to the Comprehensive Plan of Zoning and how the Comprehensive Plan of Zoning is applied. Amendments to the Comprehensive Plan of Zoning should be reasonable in nature and should not drastically change the character of an existing district or neighborhood or be contrary to the reasonable expectations of property owners. The Application's proposed regulation amendment—the significant change to the definition of principal use and how multiple principal uses will now be allowed on every property in every zone—is a drastic change to the Comprehensive Plan of Zoning and undermines the reasonable expectations of property owners as to the present and future use of land.

The proposed regulation amendment also challenges—and does not advance—the intent of the New Canaan Plan of Conservation and Development. The Plan of Conservation and Development is a policy document that allows a community to plan for future growth, development, and conservation, and how it will meet the ever-changing needs of the community over time. While the Plan of Conservation and Development is an advisory policy document that the Planning and Zoning Commission is not bound to, Article VIII, Section 8.2.C.3 (Decision Considerations) requires that the New Canaan Planning and Zoning Commission "shall take into consideration the Plan of Conservation and Development, prepared pursuant to CGS 8-23." Moreover, most planning and zoning commissions rely on the Plan of Conservation and Development recommendation when they are making or confronted with zone changes/amendments. Therefore, it is common for a planning and zoning commission to encourage amendments to follow, address, and implement recommendations of the Plan of Conservation and Development.

Adopted in 2014, the New Canaan Plan of Conservation and Development (Plan of C & D) firmly recognizes the issues and concerns regarding institutional uses in residential zones (see my December 16, 2016 report for a detailed discussion of this issue). In short, the Plan of C & D discusses at length and acknowledges the need to protect residential neighborhoods, to ensure that institutional uses in residential zones are scaled appropriately, and to reduce the threat of encroachments on neighboring residential properties. Unfortunately, the Application's proposed regulation amendment does not address any of these fundamental residence zone land use issues and concerns and in fact exacerbates them.

The Application's proposed regulation amendment fails to even propose one of the three possible approaches recommended in the Plan of C & D to address the issues of appropriate scale, intensity, and the threats of encroachment by institutional uses in residential zones – to wit:

- "Enhanced Special Permit Criteria" (p. 58)

- "Establish An Institutional Zone" (p. 60)
- "Planned Development District" (p. 61)

The Plan of C & D 'Implementation Element' also provides the following three recommendations to "ensure institutional uses are appropriately scaled" (Page IE-16):

1. Seek to minimize and/or manage the encroachment or impacts of institutional uses and other uses allowed in residential zones on neighboring residential properties (noise, lighting, traffic, drainage, etc.).
2. Adopt zoning provisions to help ensure that institutional uses and other uses allowed in residential zones have an appropriate scale and intensity for their location.
3. Consider establishing an enhanced special permit process, an institutional zone, a "planned development district", or other approach for managing institutional uses and other uses allowed in residential zones.

The Commission should have serious reservations that the applicant has not sought to address the concerns raised in, or follow the recommendations of, the Plan of C & D. But what should be of even greater concern to the Commission, is that the applicant has proposed a regulation amendment that does not address issues of appropriate scale, intensity of use, or the threats of encroachment by institutional uses on neighboring residential properties. In fact, allowing multiple principal uses on a parcel/lot will only deepen the issues of scale, intensity, and encroachments throughout the town.

The fact that the applicant has not proposed a solution already contemplated and conceptualized in the Plan of C & D should be of great concern to the Planning and Zoning Commission. If Grace Farms Foundation wants and needs multiple institutional uses at Grace Farms, why not proposed a regulation amendment that address the issues and concerns raised in the Plan of C & D? The only rational answer is that the applicant does not want to confront or address the issues of *appropriate scale, intensity of use, and threats of encroachment* presented by its special permit application.

The regulation amendment proposed by the Grace Farms Foundation appears to be a simple approach to solving its problem of not being allowed to have multiple principal institutional uses on a single parcel/lot/or site in New Canaan's lowest density 4-acre residence zone. Unfortunately, the proposed regulation amendment is not so simple and has significant, negative ramifications for the community of New Canaan. Changing the definition of principal use to allow multiple principal uses represents a drastic change to the Comprehensive Plan of Zoning that will have significant impacts on provisions throughout the New Canaan Zoning Regulations. Not only does such a change conflict with the Comprehensive Plan of Zoning but also it ignores the concerns and recommendation of the New Canaan Plan of C & D. Granting this Application for a regulation amendment will undermine the reasonable expectations of property owners as to the present and future use of land, and exacerbate the issues of *appropriate scale, intensity of use, and threats of encroachment* across all zones – residential and commercial -- in New Canaan. Based on my professional experience, my review of the

DONALD J. POLAND, PHD, AICP, CZEO
SENIOR VICE PRESIDENT AND MANAGING DIRECTOR, URBAN PLANNING
PHONE: 860.655.6897 – E-MAIL: dpoland@gomanyork.com – www.gomanyork.com

Application for regulation amendment, and the issues I have discussed above, I recommend this Application be denied.

Respectfully submitted,

Donald J. Poland, PhD, AICP, CZEO
Planning Consultant

[This document was prepared by Donald J. Poland, PhD, AICP, CZEO. The opinions and findings presented here are based on sound planning principles and the professional experience and expertise of Dr. Poland. The information and opinions provided in this report are specific to the proposed application, unique to the location and circumstances, and should not be interpreted to apply to any other applications or locations.]