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April 21, 2017

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

Re: Accessory Uses and the Grace Farms Foundation Special Permit Application at 365 Lukes Wood Road, New Canaan, CT.

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 further testimony regarding the Grace Farms Foundation Special Permit application. Having reviewed the revised application for special permit uses submitted by the Grace Farms Foundation, I do not believe that the issues regarding the multiple principal uses on a property and the conformance with the special permit requirements that I raised in my report dated December 16, 2016 have been addressed by the revised application. In addition, it is my professional opinion that the revised application raises further issues regarding accessory uses. The focus of this letter will be on accessory uses.

The Grace Farms Foundation application is for two principal special permit uses (Club or Organization & Philanthropic/Elementary Institution) in addition to the existing special permit use for a Religious Institution. As part of the application for two additional principal special permit uses, the application lists four accessory uses. The four accessory uses are:

1. Limited Food Service
2. Space Grants for Nonprofits
3. Walking Trails/Tours/Passive Recreation
4. Entry House Operations Center

The concern regarding these uses is that they fall short of complying with the requirements for accessory as defined and regulated by the Town of New Canaan Zoning Regulations. For example, Section 2.2 (Defined Terms) of the New Canaan Zoning Regulations defines the word 'accessory' as "[s]ubordinate and customarily incidental to a principal building, structure, or use on the same property." Section 2.2 also defines "use, accessory" as a "use which is customarily incidental and subordinate to the principal use of a lot or a building and located on the same lot therewith." However, the Grace Farms Foundation application makes no attempt to connect or explain which of the applied for principal uses each accessory use is



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subordinate and customarily incidental to, or otherwise demonstrate how these accessory uses are subordinate and customarily incidental to one or more of the principal uses. Just because a use is listed as accessory, does not mean that said use is subordinate and customarily incidental as defined and required in Section 2.2 of the Zoning Regulations. Therefore, the Commission should think carefully about and consider the principal use (or uses) and the accessory use (or uses) to determine if said accessory uses are indeed subordinate and customarily incidental.

For example, is ‘limited food service’ a subordinate and customarily incidental use to a Religious Institution, Club or Organization, or Philanthropic/Eleemosynary Institution? Having a kitchen and/or dining hall as part of a religious institution or social club is a common practice and can easily be deemed subordinate and customarily incidental to said uses. However, it is not a common practice for a religious institution (i.e. the local church) or social club (i.e. the VFW or Elks) to open such a kitchen and/or dining hall to the public and offer food, drink, and dining for a fee. In this regard, providing ‘limited food service’ to the public appears to be less subordinate and customarily incidental to the use (or uses) and more like a separate and principal use. In fact, providing ‘limited food service’ to the public meets the definition of a restaurant, “[a] business or use whose principal function is the preparation and serving of food for consumption on the premises at tables, booths or similar sit-down accommodations” as defined in Section 2.2 (Defined Terms) of the Zoning Regulations. The same could be said of the ‘space grants’. While some foundations (philanthropic organizations) may provide ‘space grants’ to non-profits, I am not convinced it is such a common practice that it can be deemed customarily incidental or subordinate to such a use. In addition, the intensity at which such ‘space grants’ are proposed, the space grant use feels more like the leasing of commercial office space—a commercial office space use—without a fee, than a subordinate and customarily incidental use.

The listed accessory uses become more problematic when considered in the context of Section 3.3 (Permitted Accessory Uses) in residential zoning districts. Section 3.3 provides for the accessory uses permitted in residential zones. In doing so, the section differentiates accessory uses by intensity, categorizing such uses by those Permitted without Permit (Section 3.3.A), those Permitted by Zoning or Other Permit (Section 3.3.B), and those Permitted by Special Permit (Section 3.3.C). The following table provides a summary of the accessory uses allowed in residential zones by each category of permitting:

Permitted without Permit	Permitted by Zoning or Other Permit	Permitted by Special Permit
Customary Uses	Attached Garage	Large Attached Garage
Outside Parking	Tag Sale	Day Care
Animals	Day Care	Major Home Occupation
Home Offices	Minor Home Occupation	Special Living Accommodations
Maintenance Vehicles / Equipment	Recreational Vehicle Parking	Farming
Commercial Vehicle Storage	Accessory Dwelling Unit	Accessory Dwelling Unit
	Temporary Use	Other Uses



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The four accessory uses listed in the Grace Farms Foundation application do not match or even display similarities to any of the specific named uses permitted in Section 3.3. This fact calls into question whether said accessory uses are permitted in a residential zone or must they comply with the requirements of Section 3.3.C.7 (Other Uses). Section 3.3.C.7 explains, “[o]ther accessory uses not customarily or reasonably incidental, as determined by the Commission, to a permitted principal use.” Based on the ‘Other Uses’ provision, it appears that Grace Farms Foundation will need to apply for a Special Permit for each of the four accessory uses listed in its application, and that the Commission, in addition to the Special Permit Criteria in Section 8.2.B.4 of the Zoning Regulations, will need to determine if such uses meet the intent of subordinate and customarily incidental accessory uses.

The last issue of concern related to accessory uses is Section 3.3.B.7 (Temporary Uses). Section 3.3.B.7 explains, “[t]emporary use of land and buildings for any musical, educational, charitable, religious, recreational, or fraternal purpose or entertainment, provided that such use is without financial profit except compensation to individuals for services devoted solely to the promotion of the objects and purposes for which such use is permitted, for a period not exceeding ten (10) days in any calendar year unless approved for a longer period of time by the Commission.” This provision raises questions as to the many events and programs offered, sponsored, and hosted by the Grace Farms Foundation and/or the Grace Community Church and what events and programs require individual permits and would be subject to the 10-days in a calendar year provision. For example, any event or program that pays a fee (i.e. a wedding) or generates revenue for a third party (i.e. a not-for-profit fundraiser or program) would require a permit and the Commission would have to approve all such events and programs once the 10-days in any calendar year threshold had been met.

In conclusion, it is my professional opinion, as it was in my December 2016 report, that the issue of multiple principal uses or expressly permitted multiple principal uses on a single lot has not been resolved by the Grace Farms Foundation revised application. In addition, the Special Permit application requesting the two-additional principal special permit uses (Club or Organization & Philanthropic/Eleemosynary Institution) does not address and cannot include the four listed accessory uses.

The Town of New Canaan Zoning Regulations clearly recognize the distinction between principal and accessory uses, require that accessory uses be subordinate and customarily incidental to principal uses, clearly identify what accessory uses are permitted in residential zones, and require a distinct and separate permitting process for accessory uses. Furthermore, based on the requirements of Section 3.3.C.7 (Other Uses), it is clear that all four of the listed accessory uses require their own applications for Special Permits and cannot be assumed permitted as part of a Special Permit application for a principal use (or uses).

Finally, the issues raised here regarding the proposed four accessory uses further substantiate my findings and concerns raised in my December 2016 report as to the issue of *intensity* and the *intensity of use* occurring on the Grace Farms site. *Intensity of use* is the very reason multiple principal



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uses are not typically allowed in residential zones. It is also the very reason accessory uses must be clearly subordinate and customarily incidental to a principal use. *When accessory uses are not clearly subordinate and customarily incidental to a principal use, they are or become principal uses masquerading as accessory uses.* This is the very reason the Town of New Canaan Zoning Regulations included Section 3.3.C.7 (Other Uses) and the requirement that such ‘other uses’ be approved by Special Permit. The Commission should ensure that such ‘other uses’ are in fact subordinate and customarily incidental.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald J. Poland".

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.]