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June 7, 2021

Ms. Carol Bramley, Chairman  
Litchfield Planning & Zoning Commission  
Land Use Office  
80 Doyle Road  
Bantam CT 06750

Re: Champalimaud – 31 North Street  
Application to Modify a Special Exception

Dear Chairman Bramley:

At the request of the Commission, I have reviewed the materials submitted to it in connection with an application submitted by Anthony Champalimaud to convert a convalescent home into a lodge or hotel. The application concerns a property known as "Rose Haven" and is located at 31 North Main Street within the HR-30 residential zone. I have also viewed the relevant portions of the public meeting wherein these applications were accepted as recorded by Zoom Meetings. In addition, I have reviewed the application packet submitted on behalf of the applicant by Attorney Michael P. Keilty dated May 11, 2021 which included a preliminary site plan of the current use of the property as well as a preliminary site plan showing the proposed use. Also reviewed was a letter to the applicant from Land Use Administrator Dennis Tobin PhD and relevant portions of the Litchfield zoning regulations. Based upon my review of these documents as well as my review of relevant case law and state statutes, I provide the following analysis and recommendations.

Facts:

31 North Main Street was formerly used as a convalescent home known as Rose Haven. This was a nonconforming use as it predated the adoption of zoning in Litchfield and is not a permitted use within the HR-30 district. According to information contained in the application, the convalescent home accommodated up to 40 residents. The proposed hotel use would offer 30 rooms for guests. The submitted preliminary site plans indicate that the existing buildings will not be expanded and would actually be reduced by removing an addition to the existing Main House.

The Litchfield zoning regulations do not permit hotels or motels in the HR-30 district and do not contain definitions for these uses. The regulations do permit in other residential zones by special exception, bed and breakfasts with a maximum of 3 rooms for occupancy and country inns with a maximum of 10 rooms for occupancy. These uses are also not permitted within the HR-30 district.

Since the applied for use of a hotel is not a permitted use, the Commission questions what authority it has to approve such a use.

### Law and Discussion

The application before the Commission is for a special exception to modify an existing nonconforming use. The subject parcel's use as a convalescent home is a nonconforming use. Apparently, in 2002, an application to expand this nonconforming use was approved by the Commission by special exception. The applicant is following this same procedure now – using the special exception process to apply for its proposed use of the property for a hotel.

Within that chapter of the zoning regulations entitled “General Standards and Requirements”, Section H addresses nonconforming uses, buildings and structures. Subsection 3 provides the standards for the Commission in approving a change in a nonconforming use. It does not provide a process for doing so. However, I am in agreement that the special exception procedure is appropriate here as it provides for a public hearing process and provides additional standards that can be applied by the Commission in making a decision on this application as well as following Commission precedent.

Subsection H.3 states in part that “The Commission shall determine whether a nonconforming use has changed such that its status is altered from a nonconforming use to an unlawful use.” It then provides 3 standards that must be applied in making a decision. While the Commission can consider the term or name that is assigned to a particular use in reaching a decision as to whether there has been a change in use, it must also apply this zoning regulation which requires it to consider the nature and character of the current and proposed uses and also “any substantial differences in effect upon the surrounding area resulting from the differences in the activities conducted on the lot.”

The 3 standards in the regulation which the Commission must apply in making its decision on whether this application constitutes a change in use are as follows:

- i. The extent to which the new use reflects the nature and purpose of the original nonconforming use;

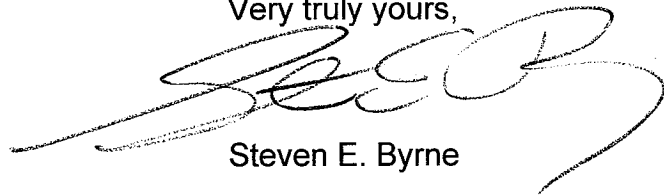
- ii. Any difference in the character , nature and kind of use involved;
- iii. Any substantial difference in effect upon the surrounding area resulting from the differences in the activities conducted on the lot.

Attorney Strub, who represented the applicant at the Commission's May 17, 2021 meeting, correctly stated that this regulation follows the language laid out by our State Supreme Court for determining whether a nonconforming use has expanded beyond its legal parameters.<sup>1</sup>

While the well-established rule is that nonconforming uses should be reduced to conformity as quickly as the law permits, the change from an existing nonconforming use to a less offensive unpermitted use by a land use agency is permitted.<sup>2</sup> "As a general rule, a nonconforming use that exists at the time a zoning ordinance is enacted cannot be changed into a significantly different kind of nonconforming use. Thus, unless the ordinance provides otherwise, a nonconforming use cannot be changed if it is substantially or entirely different from the original use."<sup>3</sup>

In my opinion, the Commission can act on this application. In doing so, it should apply Sec. H.3 of the Nonconforming Uses, Buildings/Structures Lots chapter of the regulations to determine whether the change from a moderately sized convalescent home to a moderately sized hotel is permitted. Since this a special exception application, compliance with Sec. 6 'Special Exceptions' of the Permits, Approvals and Exceptions chapter of the regulations is also required.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SEB', with a long horizontal line extending to the left and a large loop to the right.

Steven E. Byrne

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<sup>1</sup> *Zachs v. Zoning Board of Appeals*, 218 Conn. 324 (1991).

<sup>2</sup> *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703 (1988).

<sup>3</sup> P. Rohan, *Zoning and Land Use Controls* § 41.03(a).