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Austin Barney, Chair
SIMSBURY ZONING COMMISSION
933 Hopmeadow Street
Simsbury, Connecticut 06070

Re: Proposed Amendments to Simsbury Zoning Regulations
File Number: S-142

Dear Chairman Barney and Members of the Simsbury Zoning Commission:

This office represents the Simsbury Homeowners Advocating Responsible Expansion ("SHARE"), the members of which requested my review of certain proposed amendments to the Simsbury Zoning Regulations relating to new definitions of "Continuing Care Retirement Community" and "Conceptual Master Plan" with proposed corresponding regulation revisions in three other places of the Simsbury Zoning Regulations: (i) Article Seven, Section N; (ii) Article Ten, Section k; and (iii) Article Ten, Section A.

While the addition of a Continuing Care Retirement Community ("CCRC") is deemed appropriate and welcome in the Zoning Regulations, there is concern that the language as proposed is problematic both procedurally and substantively: there are emerging ambiguities and conflicts with the existing Regulations, and the proposed amendments do not go far enough in inserting CCRC's into sub-sections of Section K of Article Ten, and elsewhere, to define a cogent process. Furthermore, there is concern that, as presented, the proposed amendments dilute important, conventional areas of Commission review and discretion too early in the review process and could lead to unintended land use consequences beyond the immediately articulated goals.

Specifically, the proposed amendment to Article Ten, Section A.2.a (proposed text in **bold**) provides:

"a. All applications **under this section** shall include a site plan prepared in accordance with Article Five, Section J. **Alternatively for large projects the Commission may accept a Conceptual Master Plan (CMP) as satisfying the submittal requirements for Special Exception approval. Subsequent to approval of the CMP the applicant shall apply for and obtain approval of a final detailed**

site plan approval [sic] by the Commission prior to receiving any zoning permit or any building permit."

In the proposed language, the term and extent of "large projects", being those eligible for CMP, is not defined leaving open the possibility that any or many of the diverse Designed Development District uses otherwise contained in Article Ten could also avoid the Site Plan requirements of Article Five, Section J in the early part of Special Permit review. This outcome far exceeds what is perceived to be the current goal of accommodating Continuing Care Retirement Communities within the Regulations.

Another material concern relates to the extent to which the "Special Permit" requirement is or may be considered satisfied through the CMP especially given the standards at Article Ten, Section K, 2 and 3 used for evaluating an application under Article Ten, Section K. While the proposed Amendment includes adding the CCRC to the title of Article Ten, Section K, the Amendment does not include CCRC's in Subsections 1., 2, 3, 4, 5, 6, 7, ,8, or 9 notwithstanding that the companion uses of Article Ten, Section K, Assisted Living Facilities and Congregate Senior Housing Facility, are specifically referenced in Subsections 1 and 9, with subsection 1 making the applications for such uses subject to the procedures outlined in subparagraphs 2 and 3 thereof. Adding the CCRC to Section K may be inferred to be brought within the ambit of these additional requirements, but it would be clearer to state as much.

The description of the content of a Conceptual Master Plan as currently proposed does not necessarily include information sufficient to make the evaluation required in Section K. How do these sections reconcile procedurally? Under Connecticut law, "special exceptions"¹, although expressly permitted by local regulations, must satisfy [certain conditions and] standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values [as required by General Statutes § 8-2]. . . . Moreover, . . . the nature of special exceptions is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. . . . if not properly planned for, [such uses] might undermine the residential character of the neighborhood. . . . [T]he goal of an application for a special exception is to seek permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district." (Internal quotation marks omitted.) Cambodian Buddhist Society of Connecticut, Inc. v. Planning & Zoning Commission, 285 Conn. 381, 426-427 (2008). If it is the intention of the amendment to provide a Special Exception to an applicant prior to the Commission's review of traffic studies demonstrating that the development does not increase congestion in the streets to unacceptable levels, that inhibiting environmental factors are not in issue, that water and sewage are adequate, that neighboring properties are not exposed to nuisances associated with the proposed use, etc., then the proposed amendment undermines the well-established discretion and ability of the Commission to reject a Site Plan even where those problems may exist. This cannot be in the Town or Commission's interest.

¹ The terms "special permit" and "special exception" are inter-changeable under Connecticut law.

Proposed language for Article Seven, Section N, seeks to amend a use designation to include the CCRC as follows (proposed text in **bold**):

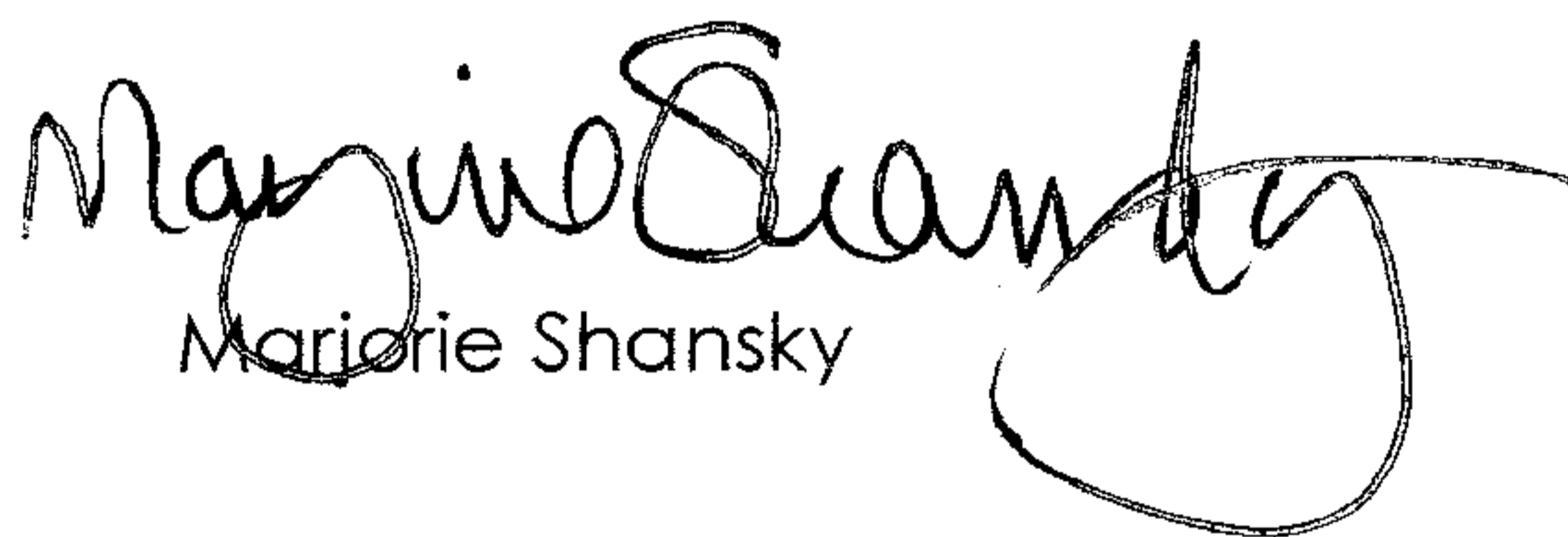
"1. Assisted Living Facility and/or Congregate Senior Housing Facility **and/or Continuing Care Retirement Community with accessory uses**, as defined in these regulations and as set forth in Article Ten, Section K."

It is submitted that the prepositional phrase "with accessory uses" is either superfluous or ambiguous. The definition of CCRC, one of the proposed amendments to the Regulations, includes a plethora of support and mixed uses that may be deemed to be accessory to the CCRC. Unless this language refers to accessory uses to the accessory uses, or to still other uses not included in the proposed definition, it should be removed.

Given the relatively short time period I have had to review the proposed amendments against the existing Regulations, this review may not be considered exhaustive. It appears that aside from the specific drafting and procedural issues identified, the primary problem with the legislation as proposed is that it conflates planned development concepts with special permit concepts without emerging as either a legislative act or a satisfactory administrative process. For an applicant wishing to plant a specific use in a locality, achieving the goals of certainty, simplicity and swiftness is enhanced where the Regulations set forth specific standards that an applicant can either measure its project against or design to. From the community's perspective, the same standards and an open process support conclusions that an appropriate use is in an appropriate place. The effort to create a short-cut in the CCRC process is inconclusive at best from a procedural perspective as proposed and, at worst, tends to dilute the appropriate depth of review that a Special Exception use must pass in order to be found compatible as to scale and location.

All of these issues may be resolved by more clarity in a proposed amendment. We urge the Commission to reject these amendments and take the appropriate time to obtain a new proposal.

Very truly yours,


Marjorie Shansky