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October 9, 2019

To be delivered by hand

Planning and Zoning Commission
Town Hall Annex
238 Danbury Road
Wilton, CT 06897

Attn: Mr. Robert J. Nerney – Director of Planning and Land Use Management

Re: MNG Equities LLC - Application to Amend Zoning Regulations (REG#19379)

Dear Members of the Commission:

As agent for MNG Equities LLC, I hereby submit fifteen (15) copies each of the following in support of its application to amend the Zoning Regulations:

1. Proposed Text Amendments (the “**Proposed Text Amendments**”) dated October 8, 2019 that have been revised to provide that the permitted density for congregate housing facilities is 24 units per acre; mirroring the permitted density for assisted living facilities.
2. Senior Living Parking Analysis (the “**Parking Analysis**”) prepared by Brightview Senior Living (“**Brightview**”).
3. Table 1 of the Institute of Transportation Engineers (“**ITE**”) Parking Generation Manual, 5th Edition, 2019 (the “**ITE Parking Generation Manual**”).

Set forth below are responses to the comments and questions made and raised in the Planning and Zoning Staff Report dated September 18, 2019:

Comment #1 The zoning regulations, as currently drafted, limit both Congregate Housing and Assisted Living facilities to properties that front on certain arterial roadways; including Danbury Road. This amendment is designed to allow such uses to locate off of non-arterial roadways; but only in cases where a historic or architecturally-significant building can be preserved. This appears to be a form of spot zoning as the potential intrusion of higher density development away from arterial roadways and potentially into quieter neighborhoods is not supported by traditional land use principals. A distinction can be drawn between a policy designed to effectuate change within existing commercial areas

versus policy that could potentially result in the geographic expansion and intrusion of non-compatible uses into quieter neighborhoods. Though the preservation of the town's historic resources represent a worthy undertaking, the request does address the broader concern of discouraging uses that, by their size, density and operations, may begin to compromise the quality of life for others.

Response: For a zone change proposal to constitute spot zoning the proposal must run afoul of both parts of a two-part test. The zone change must concern only a small area of land, and the change must also be inconsistent with the comprehensive plan of zoning adopted to serve the needs of the community as a whole. *Blaker v. Planning and Zoning Comm'n of Town of Fairfield*, 212 Conn. 471, 483, 562 A.2d 1093, 1099 (1989), appeal after remand 219 Conn. 139, 592 A.2d 155 (1991); *Morningside Ass'n v. Planning and Zoning Bd. of City of Milford*, 162 Conn. 154, 161, 292 A.2d 893, 898 (1972); *Malafrente v. Planning and Zoning Board of the City of Milford*, 155 Conn. 205, 211, 230 A.2d 606, 610 (1967); 9 Conn. Prac., R. Fuller, Land Use Law & Prac. § 2:2 (4th ed 2015)

Applicant respectfully submits that the proposed text amendments do not constitute spot zoning because they do not fall under either part of the two-part test.

First, the subject parcel, at 6.9 acres, is quite large. In addition, to the extent that the text amendments expand the area in which an assisted living facility could be built, such an expansion has been expressly determined not to be spot zoning. In *Konigsberg v. Board of Aldermen of City of New Haven*, 283 Conn.553 (2007), the Supreme Court held that a proposal to change the zoning of a five-acre parcel to be the same as the adjacent forty-five acres was permissible and was not a case of spot zoning. *Id.* at 592.

Second, the text changes to allow an assisted living facility for seniors are in accord with the Wilton 2019 Plan of Conservation and Development (the "**Town Plan**"). Specifically, at page 102, the Town Plan calls for Wilton to be consistent with State and Regional Plans:

| State of Connecticut Growth Management Principles | Wilton POCD Consistency Analysis |
|--|---|
| 2. Expand Housing Opportunities and Design Choices to Accommodate a Variety of Household Types and Needs | The Plan recommends evaluating ways to make the zoning regulations less restrictive for appropriate multi-family developments. In addition, the Plan contains several action items to develop housing options for all life stages, particularly young adults and seniors. |

Comment #2 The concept of extending public sewer and public water to properties beyond Danbury Road is generally not supported by the present-day or future Plan of Conservation and Development (Page 91, 2010 POCD).

Response: Section 7.1 on page 91 of the Town of Wilton 2019 Plan of Conservation and Development (the "**Town Plan**") makes the following recommendations:

- a. New development should be steered to areas that are already served or relatively easily expanded so that existing infrastructure can be used more efficiently.
- b. The Town should evaluate opportunities to increase density within and on the margins of existing sewer and water service areas.

The location of the proposed Brightview development is just outside the current sewer area for Danbury Road (Per Sheet 89 - "Existing Utilities Map" in the Town Plan). Based on comments a. and b. above, the proposed project area is an ideal candidate for expanding the sewer area to accommodate and address expansion opportunities outlined in the Town Plan.

Furthermore, the site is within the water service area for Aquarion Water Company. An active 12-inch water main is located in Pimpewaug Road roughly 35-ft from the site's property line.

Comment #3 Though each individual location and circumstance varies, the general concept of encouraging higher traffic volumes on local roadways does not comport with traditional land use planning.

Response: Brightview's civil and traffic engineering firm Tighe and Bond advises that although it is generally good practice to encourage higher traffic generators to access roadways with higher functional classification, access should also be planned with roadway safety aspects and access management best practices. To that end, the Southwestern Regional Planning Agency (now the Western Connecticut Council of Governments) completed an Access Management & Curb Cut Study of U.S. Route 7 (the "**Route 7 Study**") in Wilton. Due to the amount of existing access points on Route 7 a/k/a Danbury Road, the Route 7 Study recommends removal, consolidation, and/or width reduction of access points along Route 7 to "minimize conflict points or opportunities for vehicles to cross paths". Providing access to roadways with a lower functional classification are one way to reduce conflicts as traffic volumes and speed limits are lower and the additional traffic can utilize existing intersections on the higher functional class roadways as opposed to creating additional intersections.

The Route 7 Study also provided guidelines for traffic impact study analysis, which supports the current practices of the Wilton Planning and Zoning Department requiring study of new developments or redevelopments based upon the potential access locations and volume of additional site generated traffic. Such analyses would be able to assess the ability of the roadway network to accommodate the potential site generated traffic. Finally, congregate housing and assisted living facilities generate traffic at a lower rate than most commercial, retail, institutional, and other service type facilities. Depending on the location specifics including potential access points and existing traffic volumes and subject to study, lower functional class roadways can support site generated traffic volumes from lower volume generating uses.

Comment #4 The application contains no empirical data to support changes to the Congregate Housing parking requirements. Unlike Assisted Living facilities, residents living in Congregate Housing development are required to be over the age of 62, but are otherwise largely independent.

Response: With reference to the enclosed Parking Analysis, the average parking spaces per unit at Brightview's 53 facilities is 0.63 spaces per unit. In addition, Tighe & Bond advises that the ITE Parking Generation Manual 2019 includes empirical parking demand data for both congregate housing and assisted living facilities. As shown in the enclosed Table 1, parking demand at both congregate housing and assisted living facilities peak around 0.55 spaces per unit, below the proposed 0.65 space per unit in the revised zoning regulations.

Comment #5 The regulation proposal, as drafted, would allow Congregate Housing to be developed at a density of 24 units per acre when located off of Danbury Road; yet at a density of 12 units per acre when fronting on Danbury Road. This is presumably a drafting oversight.

Response: The enclosed Proposed Text Amendments were revised to correct the drafting oversight.

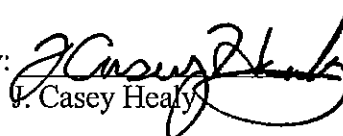
Comment #6 With regard to affordable housing standards, the regulation would establish regulatory parity between Assisted Living facilities and Congregate Housing development. The applicant should present testimony to justify this request. The two uses are vastly different in terms of services, occupant costs and stage of life needs and personal circumstances.

Response: As noted, the Proposed Text Amendments would establish regularity parity between assisted living facilities and congregate housing developments. The Commission may recall that it revised the Town's affordable housing regulations with respect to assisted living facilities in 2017 in order to bring those regulations into compliance with State statutes. The subject application seeks to do the same with the congregate housing development regulations. The Commission will recall that the "services" referenced in the staff comment are not subject to the affordable housing regulations; only the rental price for an affordable unit.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,
Gregory and Adams, P.C.

By:


J. Casey Healy

JCH/ko

cc: Messrs. Steve Marker and Alan Siegfried– Brightview Senior Living Development
Mr. David B. Schiff – Kimley-Horn
Mr. John W. Block – Tighe & Bond
Mr. Craig Flaherty – Redniss & Mead
James D'Alton Murphy, Esq.

Brightview Senior Living

Proposed Text Amendments - Revised 10-08-19

1. Modify Section 29-4.D.4.a:

Location: Congregate Housing shall be permitted only: *(1) on sites having a minimum of 50 feet of frontage and direct access to Danbury Road, Westport Road, River Road or Station Road; or (2) on sites located within 100 feet of Danbury Road, as measured from its closest point, containing a building of historical and/or architectural value that will be preserved and having frontage on a road that provides vehicular access from the site directly to Danbury Road.*

2. Modify Section 29-4.D.4.d:

Density: Congregate Housing Development in a Designed Enterprise District (DE-5 or DE-10) shall not exceed eighteen units per acre and in all other districts shall not exceed twenty-four units per acre nor have an average of more than 1.5 bedrooms per unit nor have an average unit size of greater than 900 square feet. All bedrooms shall be at least ten feet by ten feet. For the purpose of this paragraph, any room containing more than 100 square feet other than a living room, bathroom or kitchen, shall be considered a bedroom.

3. Modify Section 29-4.D.4.i:

Maximum Building Height: ~~In a Designed Enterprise District (DE-5 or DE-10) 39' or three stories, whichever is less, and in all other districts 35' or two and one half stories, whichever is less.~~

4. Modify Section 29-4.D.4.m:

Affordable Housing Units: A minimum of ~~20%~~ 10% of the total number of units shall be affordable housing units and shall conform to the requirements of 29-5.B.10 of the Regulations *with the exception that the standard lease provision (reference being made to Section 29-5.B.10.k of the Regulations) shall state and the monthly payment (reference being made to Section 29-5.B.10.m of the Regulations) shall be calculated based upon the lesser of 80% of area median income or State median income for 5% of the units and the lesser of 60% of area median income or State median income for 5% of the units.*

5. Modify Section 29-4.D.6.a:

Location: Assisted Living shall be permitted only: *(1) on sites having a minimum of 50 feet of frontage and direct access to Danbury Road, Westport Road or River Road; or (2) on sites located within 100 feet of Danbury Road, as measured at its closest point, containing a building of historical and/or architectural value that will be preserved and having frontage on a road that provides vehicular access from the site directly to Danbury Road.*

6. Modify Section 29.8.B.5.a.(13)

Congregate Housing: ~~1.0~~ 0.65 per dwelling unit

SENIOR LIVING PARKING ANALYSIS

| Name | State | Land Acreage | Total units | Parking Spaces | Parking/Unit |
|-----------------------------|---------------|--------------|-------------|----------------|--------------|
| Brightview Portfolio | | | | | |
| Annapolis | Maryland | 6.7 | 165 | 107 | 0.65 |
| Arlington | Maryland | 1.8 | 93 | 46 | 0.49 |
| Avondell | Maryland | 12.9 | 180 | 143 | 0.79 |
| Baldwin Park | Virginia | 6.6 | 139 | 84 | 0.60 |
| Canton | Massachusetts | 31.5 | 164 | 102 | 0.62 |
| Columbia | Maryland | 5.7 | 170 | 99 | 0.58 |
| Commons | Rhode Island | 12.2 | 166 | 107 | 0.64 |
| Crofton Riverwalk | Maryland | 5.0 | 159 | 125 | 0.79 |
| Country Club Heights | Massachusetts | 2.2 | 124 | 53 | 0.43 |
| Danvers | Massachusetts | 10.0 | 165 | 107 | 0.65 |
| Devon | Pennsylvania | 2.8 | 171 | 110 | 0.64 |
| East Norriton | New Jersey | 5.0 | 171 | 106 | 0.62 |
| Eatontown | New Jersey | 9.0 | 176 | 153 | 0.87 |
| Fair Oaks | Virginia | 6.0 | 170 | 105 | 0.62 |
| Greentree | New Jersey | 10.9 | 180 | 178 | 0.99 |
| Hamburg | New Jersey | 9.0 | 191 | 189 | 0.99 |
| Harrison | New York | 7.0 | 148 | 105 | 0.71 |
| Hunt Valley | Maryland | 2.0 | 180 | 108 | 0.60 |
| Innovation Center | Virginia | 1.6 | 196 | 103 | 0.53 |
| Lake Tappan | New York | 5.1 | 144 | 78 | 0.54 |
| Mays Chapel Ridge | Maryland | 2.5 | 163 | 63 | 0.39 |
| North Andover | Massachusetts | 33.3 | 137 | 95 | 0.69 |
| Northfax | Virginia | 1.8 | 200 | 120 | 0.60 |
| Nutley | New Jersey | 5.0 | 185 | 105 | 0.57 |
| Paramus | New Jersey | 11.0 | 176 | 160 | 0.91 |
| Perry Hall | Maryland | 11.9 | 211 | 146 | 0.69 |
| Port Jefferson | New York | 7.0 | 170 | 170 | 1.00 |
| Randolph | New Jersey | 5.5 | 136 | 124 | 0.91 |
| Rolling Hills | Maryland | 5.1 | 143 | 95 | 0.66 |
| Sayville | New York | 7.3 | 158 | 118 | 0.75 |
| Severna Park | Maryland | 3.3 | 239 | 183 | 0.77 |
| Shelton | Connecticut | 8.0 | 161 | 125 | 0.78 |
| Wakefield | Massachusetts | 1.6 | 131 | 84 | 0.64 |
| West End | Maryland | 1.9 | 198 | 123 | 0.62 |
| Westminster Ridge | Maryland | 8.5 | 168 | 109 | 0.65 |

| | | | | | |
|-------------------|---------------|------|-----|----|------|
| Bel Air | Maryland | 5.0 | 85 | 32 | 0.38 |
| Bethesda Woodmont | Maryland | 0.5 | 113 | 42 | 0.37 |
| Catonsville | Maryland | 2.9 | 88 | 56 | 0.64 |
| Concord River | Massachusetts | 7.0 | 93 | 50 | 0.54 |
| Fallsgrove | Maryland | 3.6 | 94 | 43 | 0.46 |
| Great Falls | Virginia | 3.6 | 88 | 57 | 0.65 |
| Grosvenor | Maryland | 3.0 | 96 | 47 | 0.49 |
| Mount Laurel | New Jersey | 7.0 | 100 | 35 | 0.35 |
| New Canaan | Connecticut | 4.1 | 94 | 50 | 0.53 |
| South River | Maryland | 3.6 | 90 | 42 | 0.47 |
| Tarrytown | New York | 5.0 | 95 | 48 | 0.51 |
| Tenafly | New Jersey | 2.5 | 94 | 51 | 0.54 |
| Towson | Maryland | 1.5 | 90 | 41 | 0.46 |
| Warren | New Jersey | 17.0 | 106 | 69 | 0.65 |
| White Marsh | Maryland | 7.5 | 98 | 44 | 0.45 |
| Woodburn | Virginia | 6.7 | 100 | 63 | 0.63 |
| Woodbury Lake | New Jersey | 6.9 | 86 | 45 | 0.52 |
| Average | | 6.8 | 143 | 93 | 0.63 |

TABLE 1**Congregate Care & Assisted Living Parking Generation Rates Summary**

| Congregate Care Facility Parking Demand Per Unit | | |
|---|----------------|------------------------|
| Peak Period | Average | 85th Percentile |
| Weekday | 0.30 | 0.48 |
| Saturday | 0.28 | 0.33 |
| Sunday | 0.27 | Not Available |

| Assisted Living Facility Parking Demand Per Unit | | |
|---|----------------|------------------------|
| Peak Period | Average | 85th Percentile |
| Weekday | 0.41 | 0.55 |
| Saturday | 0.31 | 0.48 |
| Sunday | 0.33 | 0.49 |

Source: Institute of Transportation Engineering, Parking Generation, 5th Edition, 2019.
Land Use - 253 Congregate Care Facility
Land Use - 254 Assisted Living Facility