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August 22, 2019

Planning & Zoning Commission
Town of East Hampton
20 East High Street
East Hampton, CT 06424

RE: Zone Change and Special Permit Application of Roncalli Institute Inc.
49 Oakum Dock Road, East Hampton – UPDATED 8/22/2019

Dear Commission Members,

My name is Melissa S. Harris and I am an attorney with Stanger Stanfield Law, LLC. I have the extreme pleasure of representing Saint Clements Castle and Roncalli Institute Inc. with regard to their application for a zone change, special permit application and site plan approval. Charles Dutch, an engineer with Dutch & Associates, George Fellner, architect with Fellner & Associates, Peter Callan, from Saint Clements Castle and on behalf of Roncalli Institute, Inc., and I will be in attendance at the public hearing in order to explain the applications and answer any questions that the commission and/or members of the public may have.

The zone change application, special permit application and site plan application are for the property located at 49 Oakum Dock Road (hereinafter, the "property"). The property was previously owned by an affiliate of Roncalli Institute Inc., St. Clements Marina LLC, from March 2001 to January 2013, at which time it was transferred to the Applicant, Roncalli Institute Inc. (hereinafter, the "applicant"). Currently, the property has an approximate total acreage of 4.96 acres. **UPDATE:** The amended site plan, which was completed after meeting with departmental officials, includes additional area to be added to the property from the abutting property to the north for purposes of installing a new septic system. This additional area, to be deeded to Roncalli Institute Inc. from Beverly House, LLC, an affiliate, will increase the overall size of the property to approximately 5.2 acres.

The zone change requested is to properly convert the property from an R-2 residential zone back into a C commercial zone, as discussed more fully below. At the same time, the applicant requests a special permit and site plan approval in order to properly approve a pre-existing use of the property as an assembly hall and to re-construct the building.

UPDATE: The original plan was to construct the building on the existing footprint, however, after meeting with departmental officials, it has been determined that a portion of the building is or may be located within the public water supply restricted easement area and, therefore, the amended site plan shows the building being moved back approximately ten (10) feet, with the overall size of the footprint being the same.

1. ORIENTATION RE ZONE

The property has frontage located at the end of Oakum Dock Road. A gated access is located on Oakum Dock Road. **UPDATE:** Ingress and egress to and from the property will be through the driveway coming from the upper portion of Saint Clements Castle, which is accessed by Portland-Cobalt Road in Portland.

To the west of the property is Saint Clements Castle, owned by St. Clements Foundation, Inc., which consists of 77.80 acres located in the Town of Portland and zoned B-1, Designed Business. Property to the north is a residential property owned by an affiliate of St. Clements Foundation, Inc. and Roncalli Institute, Inc. The eastern border is Oakum Dock Road. Property to the east, across from Oakum Dock Road, are residential properties owned by an affiliate of St. Clements Foundation, Inc. and Roncalli Institute, Inc. Property to the southeast is owned by Middlesex Land Trust Inc. The property is bordered to the south by the Connecticut River. Across from the river, is property situated in the City of Middletown, located in the Industrial (I-3) Zone, consisting of an industrial power plant owned by Middletown Power, LLC and/or The Connecticut Light and Power Company.

The property is an extension of Saint Clements Castle. While Saint Clements Castle is well insulated by forest/trees in order to make it a destination within itself, the entrance is conveniently located along the Route 66 corridor, between various Portland businesses and various East Hampton businesses.

2. PRELIMINARY CONSIDERATIONS/HISTORY

With regard to a zone change application, the preliminary considerations are whether this change will fit in with the neighborhood and the comprehensive plan of development.

Commercial use at the property can be traced back as far back as 1828, when it was owned by the Tibbals Oakum Company, who, upon information and belief, manufactured and sold oakum (tarred fibre used to seal caps in wooden vessels and deck planning of iron and steel ships). Also upon information and belief, it started being used as a commercial marina after it was purchased by Samuel Stuart in or around October 1944. The property was formerly/officially changed from a residential zone into a commercial zone on April 25, 1955. At that time, it was being used for a commercial business use known as Cobalt Marine by Joseph Trotta and Sidney Smith. The property continued to be used as a commercial marina which stored, repaired and built boats, rented boat slips and held various social events, until the time that it was purchased by St. Clements Marina, LLC on or about March 29, 2001. At the time that St. Clements Marina, LLC purchased the property, it was under the understanding that commercial use was allowed at the property

and continued using it as a marina and place for social events. St. Clements Marina, LLC transferred the property to its affiliate Roncalli Institute, Inc. on or about January 30, 2013 who was under the same understanding regarding its zone/use, i.e. that commercial use was allowed at the property and it continued using it as a marina and place for social events.

Since the previous application for a zone change, which was rejected on November 1, 2017, research was conducted, via Freedom of Information Requests, to determine how the property was changed from a commercial zone back to a residential zone. Based on the findings, it appears that the property was zoned back to a residential zone (R-2) in or around August 15, 1990, when total town-wide revisions to the zoning regulations and map were made. Also based on the findings, it appears that the change made to the property was not properly done and, instead, was done by error and/or mistake as there are no notices, documents and/or minutes indicating that it was the intent that the property be changed to residential. Furthermore, the property continued to be used for commercial purposes.

Since owning the property, St. Clements Marina, LLC and then Roncalli Institute, Inc. have made numerous improvements to the property, including, but not limited to the following:

1. Constructing a driveway from Saint Clements Castle, thereby providing access from Portland-Cobalt Road in Portland as the primary source of ingress/egress secondary to Oakum Dock Road, which is narrow and dangerous, and decreasing traffic through Oakum Dock Road (2008).
2. Decreasing the level of noise at and emitting from the property by no longer continuing with the use of the property as a working marina (boat service and repairs, fueling, boat sales, boat storage, etc.) and continuing on with the use of the property for as a "passive" marina (providing for docking and boat slip rentals) and for social events/gatherings.
3. Providing a Public Water Supply Easement to Town of East Hampton Water Pollution Control Authority allowing development of two wells on the property and restricting the use of the property (2010).
4. Removing old large structures incidental to the use of the property as a marina and replacing with new structures, which were later connected and enclosed, all through obtaining proper building permits and certificates of occupancy (2010-2013).
5. Constructing a deck/pier to fully enjoy the scenic views of the river, with DEEP permitting.
6. Dredging of the marina, installation of new bulkheads and state of the art docks as well as a security system, with DEEP permitting.
7. Overall beatification of the grounds.

Between August 12, 2014 and June 25, 2017, there were ninety-eight (98) social events/gatherings, sixty-two (62) of which were wedding receptions, for which wedding

permits were issued, at the property. During the entirety of that duration, there were never any complaints made to the Town of East Hampton regarding or incidental to the use of the property for social events/gatherings.

3. PROPOSED USE AND HOURS OF OPERATION

The proposed use is a continuation of the use previously established at the location as both a "passive" marina and as an assembly hall, i.e. a facility to be used for social event/gatherings such as weddings, banquets, corporate events and functions (hereinafter, the "facility"). The marina is currently approved for twenty-nine (29) slips. The maximum capacity for events at the facility is 150 people, however, events will typically continue to be limited to 100-120 people.

The facility will be used year-long, however, the nature of the business provides for a "busy season" that typically runs from May through October. The hours that the facility will be open and available for use, by appointment, is from 9am to 12am. Corporate events are typically during the weekday, between 9am-5pm. Weddings are typically on Fridays, Saturday and Sundays and typically range in times from 11am to 10pm and are typically five to six hours long. Social events (birthdays, anniversaries, etc.) can take place during the day or evening and are typically three to four hours long. Liquor will be provided on the premises with proper permitting.

4. IMPACT ANALYSIS

When determining whether or not a zone change should be approved, changes to the neighboring properties, zones and the Plan of Development should be taken into consideration. An application for special permit use requires similar analysis. In this case, the application is to correct a mistake and/or error and re-establish the property as a Commercial (C) Zone as well as to allow for the continuing existing legal non-conforming use as a marina and the existing non-conforming use as an assembly hall, i.e. facility to be used for weddings, banquets, corporate events, functions and social gatherings. Analysis should be limited to said application and the following should be taken into consideration as support for the approval of the application:

- A. APPLICATION IS A BENEFIT TO THE TOWN - Applicant is a 501(c)(3) non-profit founded to support local charitable and educational programs. They are involved with helping the homeless, elderly, cancer research, hospice care and programs for local children. They are a supporter of many local as well as national and international organizations. The money/income derived from the proposed continued use as a "passive" marina and assembly hall will go back into the community. The fiscal impact is set forth below.
- B. LACK OF IMPACT ON NEIGHBORING PROPERTIES - By approving the zone change and special exception use, there will be no impact on the neighboring properties because the property has, since 1955, been zoned commercial and/or treated as commercial. The use proposed, a "passive" marina and assembly hall, is the same use that has been in existence since at least 2014 without any complaints

and/or issues. Furthermore, to the extent that any minimum impact has been realized, *arguendo*, the current plan provides for additional limiting factors to be put in place related to traffic, noise, environmental considerations, etc. to ensure continued harmony with the surrounding neighborhood.

- a. Traffic - The property is and will continue to be listed as having an address at 1931 Portland-Cobalt Road, Portland, CT. All traffic entering and exiting the property for the purpose of utilizing the facility will be from Portland-Cobalt Road in Portland. There is or will be a permanent driveway easement in place, which runs or will run with the land. **UPDATE:** The gate blocking the entrance from/to Oakum Dock Road, East Hampton, which is already in place, will be closed at all times and will be modified to include a key-pad, to which a code will be provided to emergency personnel. The gate will also be used to access the properties located at the end of Oakum Dock Road and owned by affiliates of Roncalli Institute, Inc.
- b. Noise - The hours of operation are to be limited to 9am to 12am. Wedding ceremonies taking place outside will end no later than 8pm and noise levels will be limited to processional music (via speaker or live music) and clapping/cheering at the end of the ceremony. Outdoor cocktail hours will end no later than 8:30pm and noise levels will be limited to conversation and background music. Entertainment (bands, disk jockeys, etc.) will end no later than 12:00 am and will be located inside of the building. Noise levels shall be consistent with the CT DEEP Title 22a-Section 22a-Part 69, Control of Noise. **UPDATE:** The new construction will provide for greater noise insulation.
- c. Property Values - Saint Clements Castle and Marina is one of the most unique and elegant venues in the State of Connecticut. The change in use from a working marina/boat yard to a "passive" marina and assembly hall and the improvements made have increased the value of the property and, consequently, the property values in the surrounding area.

C. POSITIVE FISCAL IMPACT – The fiscal impact is a positive one.

- a. Employment - Currently, Saint Clements Castle employs approximately one-hundred sixty-two (162) people, approximately forty-four (44) of which are from East Hampton. The ability to continue to use the property as an assembly hall will bring approximately thirty percent (30%) more business to Saint Clements Castle. As a result, Saint Clements Castle estimates that it will employ an additional forty-nine (49) full and part-time employees, including, but not limited to, banquet manager, cooks, servers and local talent, which will be derived from East Hampton and surrounding towns.
- b. Increased Tax Revenue - Before the fire, in 2017, the property was valued by the tax assessor at \$724,290. Since the fire, the property has been valued by the tax assessor at \$429,390. The applicant estimates that, by making

the proposed improvements to the property, the increase in tax revenue to the Town of East Hampton will be approximately \$30,000 to \$38,000 each year. In addition, the applicant estimates an additional \$5,000 in personal property tax revenue.

- c. Impact on Town Services - The facility will not impose an additional cost on local government i.e. need for increased services such as police, fire, transportation, education, etc.
 - d. Impact on Local Businesses – Saint Clements Castle already attracts approximately 40,000 people each year. The facility will increase the number of transient day-trippers or even weekend-trippers to the area, which will result in an increased number of persons spending their money at businesses located within the Town of East Hampton. The applicant looks forward to working with local businesses in the future to make those visiting Saint Clements Castle and Marina aware of what the Town of East Hampton has to offer.
- D. NO IMPACT ON NEIGHBORING ZONES – Any impact on neighboring zones has already been realized based on the zoning history and use of the property. The most recent and proposed use, as a “passive” marina and assembly hall, is a much less intense use than what was located at the property previously – a working marina that stored boats, equipment and machinery, conducted boat maintenance and repairs (including painting), and stored, sold or dispensed fuel as well as other potentially hazardous materials or substances.
- a. As per the zoning regulations, a fifteen (15) foot buffer will be established or re-established along the boundaries bordering the residential zone. It is the plan to install green giant arborvitae, which are dense and fast growers, growing up to three (3) feet a year under good conditions, with a mature height averaging fifty (50) to sixty (60) feet with a twelve (12) to twenty (20) foot spread.
- E. NO ENVIRONMENTAL IMPACT – The impact of changing the zone back to a commercial (C) zone is negligible where the marina would be considered a pre-existing non-conforming use and, therefore, any and all activities incidental to such use are already allowed on the property regardless of the zone change. In addition, the Public Water Supply Easement, which provides for restrictions located within approximately two hundred (200) feet of the wells/reserve wells, limits the uses and the construction that can be allowed at the property. The impact of the proposed use as a passive marina and assembly hall on the environment is far less than the previous use as a working marina which submitted obnoxious and hazardous and/or poisonous fumes (boat maintenance, repair, painting, fuel storage, etc.) and which emitted a high volume of noise. Additional aspects related to environmental impact include, but are not necessarily limited to, the following:
- a. The property/facility includes the following: Parking lot stormceptor, geothermal heating/cooling, dark sky compliant lighting (directional LED

lights to cut down on and/or eliminate light pollution) and sufficient insulation. In addition, all trash will be properly contained.

- b. Applicant has obtained all necessary DEEP permits for the work conducted at the property along the river/marina. In doing such, they are sensitive to the fact that the property is located within the Natural Diversity Area and has and will continue to work with the DEEP to ensure that necessary precautions are in place.
 - c. While the Regional GrowSmart Plan, developed by the Lower Connecticut River Valley Council of Governments, may list the area of the property as a conservation area, which is not a development priority area, the fact of the matter is that this property was already developed for commercial purposes over ninety (90) years ago. The applicant is not looking to develop the property, but to continue to improve upon the existing commercial development of the property and to do so in a manner that makes the most out of the scenic Connecticut River.
- F. INFRASTRUCTURE CAPABILITIES/REQUIREMENTS –The property will be served by a sufficiently sized well located on the property. **UPDATE:** The property will also be served by two (2) sufficiently sized septic systems, one located on the property and one located on what is now the property to the north, to be deeded to applicant and filed on the land records upon approval. Electric power currently services the property.
- G. IMPACT ON PUBLIC HEALTH, SAFETY, WELFARE – There will be no impact on the public health or safety. Applicant is limited as to what activities may be conducted on the property by virtue of the Public Water Supply Easement. **UPDATE:** The proposal decreases the safety issues associated with utilizing Oakum Dock Road for ingress and egress by utilizing Oakum Dock Road only for emergency access and in order to access abutting properties owned by Applicant's affiliates. There will be, however, a positive impact on the welfare of the Town of East Hampton based on the fact that applicant is a charitable organization that benefits and supports local charities and organizations.
- H. APPROPRIATENESS OF LOCATION FOR ZONE CHANGE – The property is and has, for the last ninety (90) or so years been used for commercial use. It is appropriate to return the property back to commercial where it was erroneously/mistakenly changed to residential in 1990. In addition, based on its location adjacent to the Portland business zone and across from the Middletown industrial zone, the property is appropriate for commercial zoning.
- I. NO POTENTIAL FOR CONFLICT BETWEEN UNLIKE USES OF ADJACENT ZONES – The historical use of this property as commercial has indicated that there has been no conflict, where, upon information and belief, there have been no complaints regarding its use and, based on that fact and the fact that additional buffering will be added, there is no future potential for conflict.

J. NO POTENTIAL FOR SIGNIFICANTLY ALTERING CHARACTER OF THE AREA AND/OR TOWN – The improvements already made to the property by the applicant have been beneficial to the character of the area and the Town. Previously, the property was used as an active marina, consisting of boat storage and maintenance/repair facility. Since purchase, the Applicant has cleaned up the property, removed old large unsightly structures and replaced the same with a structure mimicking that of Saint Clements Castle. Applicant has made significant improvements to the marina and beautified the property. Additional improvements that are included in the Application will only help to improve the area and the Town overall.

K. THE APPLICATION ADVANCES THE PURPOSE OF THE ZONING REGULATIONS

- a. Guiding the future growth and development of the Town in accordance with the Plan of Conservation and Development. The application is in accordance with the Plan of Conservation and Development in the following, but not necessarily limited to the following, ways:
 - i. According to the Plan of Conservation and Development (POCD), Page 25, residents indicated that it should be encouraged to develop the industrial/business base, promote shops/business, attract better restaurants and develop outlet/variety/specialty/gift/antique shops. The POCD further stated, “By encouraging these issues, policies and ideas, the Town will enhance the safety, sustainability, environmental health, fiscal stability, ambiance and overall community welfare as we move forward into the future.” Not only does the approval of this application fall in line with development of the business base, but, by approving the business, it creates a destination within East Hampton which may, in turn, bring more business into the Town and consequently bring more shops, more businesses and better restaurants.
 - ii. According to the POCD, Page 26, residents felt that the lack of diversity in businesses throughout town should be discouraged, reduced or eliminated and that “the Plan should take steps to discourage or eliminate them.” The application provides for an appropriate and quality businesses at the property that, due to its design and overall nature, coincides with the rural small-town character.
 - iii. According to the POCD, Page 63, it should be an objective to attract and retain appropriate businesses with its limited commercial/industrial land, lack of direct access to an interstate highway and rural location. According to the POCD, “East Hampton is not positioned to become a major business destination. However, this does not mean that the Town is without economic

development potential. East Hampton needs to make the most of its economic potential by focusing on its strengths to attract and retain businesses...East Hampton should focus on what is needed to encourage businesses that cater to the day-tripper and summer vacationer to locate in East Hampton..." An approval of the application allows for the Town of East Hampton to retain the business of Saint Clements Castle and the economic benefits that it brings to the Town. Saint Clements Castle is a destination spot for a variety of different events, thereby bringing the day-tripper or even the weekend-tripper into the Town of East Hampton.

- iv. According to the POCD, Page 65, the Town should consider modest expansion of commercial and industrial development areas with East Hampton's limited potential for new economic development. The POCD states, "the Planning and Zoning Commission should consider modest expansions of existing commercial and industrial zones where appropriate due to available utilities, traffic capacity, and adequate buffers against incompatible uses and important resources..." Here, it is clear that the goal of the POCD is not to limit or eliminate commercial areas, but to modestly expand them. Failure to correct the zoning of the property back to commercial and approve the use as an assembly hall would be contrary to the purpose set forth in the POCD.
- b. Protecting the character and the historic, social and economic stability of all parts of the Town and ensuring that development is orderly and beneficial. The application requests that a mistake and/or oversight that occurred in 1990 be corrected in order to protect the character and the historic use of the property as commercial. Furthermore, approving the continued use as an assembly hall protects the social and economic stability of the Town, i.e. creates employment opportunities, increases real estate taxes, increases personal property taxes and increases the number of persons visiting the Town of East Hampton and spending money at local business.
- c. Protecting and conserving the value of land and buildings appropriate to the various zones established by these Regulations and throughout the Town. A failure to zone the property back to commercial and approve the reconstruction of the assembly hall would not conserve the value of the land and would, just the opposite, decrease the value of the land and the consequential tax benefits to the Town of East Hampton.
- d. Conserving and protecting the natural resources of the Town, especially groundwater and drinking water, in recognition of their importance to the health, safety and general welfare of East Hampton and its large environs. By providing an easement to the Town of East Hampton, through its Water Pollution Control Authority, the applicant has assisted in protecting the natural resources in the Town, i.e. the groundwater and drinking water, and ensuring that the same will be continue to be protected in the future. This

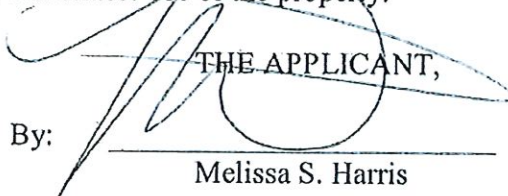
limits the use and the development of the property in the future.

- e. Promoting the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard for the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian circulations appropriate to the various uses of land and buildings through the Town. The application does this, especially where it decreases the use of Oakum Dock Road.

5. CONCLUSION

In conclusion, the application to change the zone back to a (C) commercial zone should be approved based on the historic and continuing use of the property as commercial, based on the mistake/error that occurred in 1990 that changed the property from a (C) commercial zone to an (R-2) residential zone and based on the fact that the change back into a (C) commercial zone will not impact and/or change neighboring properties, neighboring zones or the Plan of Development in terms of traffic, fiscal impact, environmental impact, infrastructure, impact on public safety/welfare, where the location is appropriate, where there is no potential for conflict between unlike uses of adjacent zones, where it is in conformance with the goals of the POCD and where there is no potential to significantly alter the character of the area and/or the Town.

Furthermore, the special exception and site plan should be approved where the use has and will continue to be a benefit to the Town, there are no negative impacts on neighboring properties, the use is and continues to be appropriate and suited to the property, the use represents the least impact reasonable to the environment upon the site and areas likely to be affected by the use, it is consistent with the POCD, it advances the purposes of the zoning regulations and is an appropriate and reasonable use of the property.


By: _____
Melissa S. Harris
-Its Attorney-