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Via U.S. Mail and Email

Virgil de la Cruz and Charles Pia, Jr., Co-Chairs
Land Use-Urban Redevelopment Committee
Stamford Board of Representatives
888 Washington Boulevard, 4th Floor
Stamford, CT 06901

Re: Proposed Text Change to Stamford Zoning Regulation BBB.C-D Designed Commercial District

Dear Co-Chairs de la Cruz and Pia:

I am a Member of the law firm of Pullman & Comley, LLC and I represent Riverturn Condominium Association ("Riverturn") ("Condominium Association"), as well as unit owners Mr. & Mrs. Peter Licopantis, therein.

Riverturn is located in an RM-1 Zone and would be significantly impacted by the proposed zone change, which will allow a purported "gym" to be located in the High Ridge Office Park. Riverturn was constructed in a special zone created for it, designated as RM-1, "Multi Family-Low Density". It acts as a buffer between the commercial strip along High Ridge Road and the residential neighborhoods to the North. To the Northwest is the High Ridge Office Park, which historically has been a quiet neighbor and contains no retail facilities. Therefore, while the traffic faced by the Riverturn Condominiums at the intersections of High Ridge Road, Turn of River Road and Buxton Farm Road can at times make it impossible for them to get out of their home, the High Ridge Office Park has been a predictable peak producer of traffic in the morning and in the evening, and with almost no contribution to traffic at other times of the day or weekends.

I would like to start off indicating my agreement with a letter transmitted to your Committee by Attorney Leonard Braman on behalf of the Sterling Lake Homeowners Association concerning the legal position that the Board of Representatives now finds itself in. The Board of Representatives is sitting as a zoning board, with full legislative authority to decide whether or not this proposed zone change is a good, or a bad thing. Although the term "appeal" from the Zoning Board has been bandied around, this is not an "appeal" in the traditional sense of the word. The Board of Representatives is not being asked to determine whether or not the Zoning Board made a mistake of law, or an error in judgment. Rather, the Board of Representatives gets to sit and decide, as a matter of policy, is this proposed zone change a good

idea or not. As such, the Board of Representatives can approve the language as changed, or it can reject it. Unfortunately, the case law is clear that the Board of Representatives cannot make changes to the proposed zoning language so as to improve it. But, if the Board of Representatives decides to reject the proposed language, it can forward it back to the Zoning Board with recommendations on how the proposal may be improved.

It has been correctly stated that at the present time, the zoning regulations of the City of Stamford allow for Gymnasium or Physical, Cultural Establishments in certain zones, but they would not presently be allowed in the C-D Zone covering the High Ridge Office Park. It is also been correctly stated that the zoning regulations currently do not have a definition of what is meant as a "Gymnasium or Physical, Cultural Establishment". Occasionally, this phrase has been generically referred to as a "gym". One thing has to be made clear, however, what is proposed to be allowed under this zone language change is anything but what the average person would consider to be a traditional gym. Along with the proposed zone change, the applicant has proposed a definition for a "Gymnasium or Physical, Cultural Establishment" that would include, without limitation, a multiple of potential uses.

Putting together the list that is proposed in the new definition, along with what the applicant already utilizes for its Harrison, New York facility, we can assume that the following potential uses would be deemed allowed under this language change:

- **A Beauty Parlor;**
- **A bar serving alcohol;**
- **A restaurant and café;**
- **Medical offices;**
- **Chiropractic offices;**
- **Kids' camps;**
- **Pools, with water slides;**
- **Pool parties;**
- **Yoga;**
- **Rock walls;**
- **Day surgery facilities;**

- **Spas;**
- **Retail merchandise operations;**
- **Tennis, Racquetball and Squash courts**
- **Basketball, soccer or other sporting leagues; and**
- **Social events;**
- **Music**
- **Dances; and**
- **Unspecified outdoor sporting activities.**

The proposal is to allow the facility to remain open from 4:00 a.m. to 12:00 a.m., seven days a week. Based upon the appearance of the Harrison, New York packed parking lot, we can also presume that such a facility would be extremely popular.

One might ask, what is the limit of the definition and what would be allowed? Currently, the applicant and the Land Use Staff propose to leave it to the ZEO's discretion whether or not any proposed additional uses not mentioned above, would be deemed "accessory" to a Gym use. The applicant already submitted a proposal of many of the above listed items to the ZEO and the ZEO simply signed off deeming that they would all be "accessory to a Gym". Taking the most glaring example, I cannot imagine that any other town deems a bar, selling alcohol, to be an accessory use to a Gym. A juice bar, maybe, but an alcohol bar, I doubt it.

So what would be the net effect of allowing this language change? Well as detailed below, the first result will be that the immediate surrounding condominiums would be sandwiched between the High Ridge Road retail strip and another retail operation in their backyard. Many of the proposed uses that would be allowed as a Gym, as well as those that can be anticipated under the language change, would not heretofore have been allowed in anything but a retail zone. The residences of Riverturn and Silver Lakes appreciated when they purchased their units that they would be living next to an Office Park. The Office Park, as stated above, has predictable traffic peaks and none on weekends, and generates no noise. These collective condominium unit owners did not buy into their projects to ultimately be sandwiched between two retail/commercial operations.

A common theme by the Land Use Staff and the Zoning Baord, and certainly the applicant, is that the condominium unit owners should not worry about the project because the Zoning Board can regulate the applicant's proposal by attaching conditions to any special

exception permit. Again, the first fallacy to this argument is that they are leaving it totally to the ZEO's discretion whether or not the applicant can add more and more uses to the project as it goes forward.

The second fallacy to this argument is that it fails to pay heed to the primary rule of law, and that is that "details count!". The Land Use Staff and, (maybe) even the applicant, forget that while a zoning board may reject a future special exception application once the regulations are changed, based upon general concerns of health, safety and welfare, the law is clear that there must be ***substantial evidence*** in the record to support such a denial. If an application meets the regulations, and there is no evidence that the project would create a danger to general health, safety or welfare, it must be approved. In that respect, it is more like "an application of right". So you must assume that once this language change is approved, this project will get approved.

So let's turn to the argument that conditions can be attached to protect the residential owners. With respect to conditions that can be attached, the Zoning Board has again missed a key legal issue. While the existing regulations would probably allow conditions to be attached to address noise concerns, they have adopted language changes without many protections for other conditions the Land Use Boards might want to attach to a future special permit. The Zoning Board, and its staff, should have come up with an exhaustive list of restrictions to act as a menu that they could pick from for any future special exception permit application. Case law establishes that <u>if</u> a Land Use Board approves a special permit application, and <u>if</u> it attaches conditions, those conditions must be spelled out in the regulations as options that the Land Use Board may choose. Out another way – the conditions must be found in the regulations that apply to that zoning regulation. They <u>cannot</u> pick restrictions out of the air. Thus, taking the position that the Board of Representatives should proceed with the language change, ...and "don't worry about any concerns, as we will attach conditions in the future" .....doesn't work because the Zoning Board failed to implement a key step. If you examine the Motion to Approve the language change, they even forgot to include in the Motion those conditions that they were discussing.

Thus, if the Board of Representatives accepts the change to the zoning language as proposed by the Zoning Board, the cat will be out of the bag. A project of the magnitude proposed by the applicant would be built. It will then be too late to impose many potential restrictions to protect the neighbors that the Zoning Board should have considered as options for down the road. What, if for example, the Zoning Board wanted to require that the exteriors pools be enclosed in a greenhouse structure to minimize noise? Answer, they did not attach conditions that could require enclosure of outside recreational activities. Taking another example, what if (as with the Planning Board), it was feared outdoor events such as soccer leagues or basketball leagues would generate significant noise? Could the Zoning Board attach a condition that all recreational activities be kept indoors, or even limit soccer legues? As currently proposed, the regulations would not allow such a restriction. In fact, the proposed regulations suggest hours of

use for outdoor use which would be the opposite of suggesting they could not occur. Similarly, if the Zoning Board concluded that a particular use would be inappropriate, either because of traffic, bad experience, or other reason, such as to say there should be no beauty salon, or no medical facility, or no liquor, could the Zoning Board add such a restriction? They failed to include in their language the option of restricting usage of the premises. As such, important details were skipped which would have empowered the Zoning Board to attach important conditions to protect the neighbors. Therefore, the language changes should be rejected by the Board of Representatives and sent back to the Zoning Board.

The applicants experts acknowledges some sound barriers will be required due to pool noise and suggest some walls to modify the impact. But studies of highway sound barrier walls reveal wall barriers lose their effectiveness after approximately 300 fee. Why? Because sound does not travel in straight lines and, can, and will bend over walls. See Highway Noise Barrier, the Science is Mixed. Are There Alternatives? By Meryl Davids Landau 12/27/17 ["...the massive walls are ... not very effective – and sometimes make matters worse."] Further the article reminds us that studies by experts are almost always based upon calm environmental conditions – which almost never exist – and which can dramatically alter the test from reality.

Another issues that was treated as "we'll deal with it later" was the potential traffic that will be generated by this proposed "Gym." Once again, if the language change is accepted, it will be too late to stop the impact of the traffic. To start, let's talk for a moment to talk about the traffic study that the Applicant submitted. It is not based upon the 4,000-5,000 members that the Applicant indicated they hope to sign up. Not only would such members be coming and going from the premises at all times of the day during the week, but also during the weekend. It is also important to keep in mind that a zoning commission can a regulate business use, but it cannot regulate the volume of the business conducted by an approved use. Thus, if membership swelled to 10,000 members, there is nothing the City can do about that. Once the City approves the project, it can generate as much business as the facility can tolerate, without any ability on the City's part to regulate it. Thus, there is no known cap on the traffic impact this facility might cause.

The Staff Report accepted the applicant's traffic study without any criticism or comment. The traffic study report however was based upon a traditional gym, not the gym on steroids now being proposed for this site. As comparable property, the study looks at a medical office building. Medical office buildings are not busy 7 days a week like this facility will be and medical offices do not generate weekend or off hour traffic. A medical office also generates no noise. There is simply no comparable in the traffic study books to a gym on steroids that the traffic engineers could have looked at. This "Super Gym" is something new. Thus, if it turns out that there is a horrible increase in traffic, there is nothing the Town can do. Suggestions that the traffic can be alleviated by some modifications ignores the simple fact that there is one ingress and egress point to High Ridge Park that will dump all the traffic in front of these two

condominium projects at a three-way intersection that is already extremely busy during multiple times of the day. To suggest that this project will actually result in a net decrease in traffic flies in the face of reality.

I would like to turn the Representative's attention to the potential noise generated by this facility. Again, it has been suggested that conditions can be attached to any proposal to try and minimize the noise levels that will impact the surrounding residential neighborhoods. Yes, this one condition that the Zoning Board has properly imposed as a potential restriction on approval. Like the Planning Board, the Zoning Board had a lively debate about whether to allow outdoor recreation. The Planning Board deemed it inappropriate to have outdoor recreation, which we point out could potentially include leagues with cheering sides. The Zoning Board should have attached at least the option of prohibiting such activities. Instead the Zoning Board opted with just mandating certain db levels be adhered to.

Mandating that the applicant comply with certain decibel levels, and even testing for those decibel levels, is a joke. I know the City has had difficulty trying to pursue criminal enforcement decibel level violation. Well, it is no more fun trying to enforce such noise levels in the civil courts. The offender will always claim that something other than their project caused the noise and protests about their inability to control noise levels. As a practical matter, what would this applicant do when it is notified a week after a raucous Sunday night event around the pool that violated the decibel level. Is it going to call up the offenders who are its members and tell them "don't do that again?" It will be an impossible restriction to enforce.

This emphasizes another failure of the proposed regulation change. What if, for example, the Zoning Board wanted to attach a condition that there be no outdoor concerts by the pool. As currently proposed, the Applicant would simply ask the ZEO to signoff that concerts are an ancillary use. The Zoning Board in turn, could arguably not attach a condition of no bands by the pool because, it failed to make that a list of restrictions it might impose.

This is especially disappointing since the Staff Report of February 16, 2018 implied that the Zoning Board could limit outdoor activities to minimize noise, but it looks like that option might be off the table now by failing to have included such a restriction option in the proposed language change.

Turning to the compatibility with the Master Plan. The Land Use Staff states that this application is compatible. We argue it is not. The proposed regulation change would allow a use not compatible with the adjacent residential uses as the Land Use Staff suggests. The traffic it will generate and the likely noise from outdoor activities is not something that the homeowners should have to tolerate. For example, it has been suggested by the applicant that the proposed pool is no different than the pool at the nearby Italian Community Center. In fact, they refer to it as a "recreational lounge pool." But like the gym, its proposed pool is not one pool but rather

two pools, and, they are pools on steroids. Assuming that one can analogize to the Applicant's Harrison operation, the pool is more akin to a water park with huge spiral slides.

With Kids' camps, and outdoor recreational activities, we can assume that significant noise will be generated by the outdoor pool that would be more akin to an amusement park. That cannot be deemed compatible with a residential neighborhood.

The Master Plan also requires that there be no "net increase in traffic." As stated above, we totally disagree with the absurd claim that this project would actually reduce traffic coming and going from High Ridge Park.

In conclusion, what the zoning language change would allow, is a new type of land use that neither Stamford nor any other surrounding Connecticut communities have yet experienced. As such, with a new proposed land use, the proper approach would have been to look at the entire City and see where such a new use will fit. Only then should regulation changes be made to allow such a new use if the City thought it was a good idea.

Looking at the applicant's Harrison facility, you can see that it is sandwiched between two interstate highways, as it has no residential abutting properties which would be impacted by the facility's traffic or noise. That would be a deemed a good location for such an intense use. Putting it in the backyard of residential homes is not.

It was not proper for the Zoning Board to assume they can severely restrict the Applicant's proposal so as to minimize residential impact, when they fail to take steps to put in place a proper list of potential restrictions. Attorney Hennesey, on behalf of the applicant, stated to the Planning Board on February 6, 2018 that he acknowledged entertainment and retail complexes would be a forbidden adaptive reuse of an office park under the Master Plan. But isn't that exactly what these regulations will allow? It cannot be said this is anything less than an ***entertainment complex***, meant to pamper all aspects of the human body and the mind. Exercise bikes, beauty salons, Botox treatments, backrubs, followed with a mixed drink to top it all off. It sounds like an entertainment complex to these worried condominium owners.

The proposed language to the Zoning Regulations are too loose and indefinite. What will be claimed to be an allowed use in the future is poorly defined and needs to be sent back to the drawing board. For the foregoing reasons, we urge the Board of Representatives to reject the change proposed to Stamford's Zoning Regulations.

Very truly yours,

Edward P. McCreery III

EPM:ama
Enclosure