

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Carol M. Szymanski, Zoning Enforcement Officer

DATE: January 29, 1988

RE: Legal Opinion - Snack Shop in Professional Building, Saybrook Road

FACTS:

Approval has been requested to operate a "snack shop" in a professional building located at 520 Saybrook Road as permitted by Zoning Code Sec. 60.03.04 as an accessory use in an MX zone. However, Zoning Code Sec. 10.07.02, "ownership", requires that the accessory use "is operated and maintained under the same ownership." One of the partners in the proposed snack shop is a "general partner" in the professional building and the others are "limited partners."

QUESTION:

Does a "general partner" in the professional building (or a "limited partner") qualify under the "ownership" requirement of Zoning Code Sec. 10.07.02?

ANSWER:

A "general partner" qualifies an owner but a limited partner does not for purposes of Sec. 10.07.02.

ANALYSIS:

Middletown Zoning Code Sec. 60.03.04 states:

"Incidental services for the convenience of occupants, such as news stands, snack bars, personal service shops, provided that not more than five (5) percent of the total floor area of the building is used
Zones: TD, M, MX

Section 10.07.02 of the Zoning Code states:

OWNERSHIP

is operated and maintained under the same ownership and on the same lot as the Permitted Uses.

The building at 520 Saybrook Road is currently owned by the partnership. See Deed from Rose S. Adorno and Marion A. Carta to Kalmar Realty Associates, dated November 20, 1983, recorded in Volume 668 at Page 191 of the Middletown Land Records.

"General partner" is defined as "one of two or more persons who associate to carry on business as co-owners for profit and who are personally liable for all debts of the partnership." Black's Law Dictionary, at 616, Fifth Ed. (1979) (emphasis added).

Connecticut has adopted the Uniform Limited Partnership Act. C.G.S. Chapter 610, Sec. 34-9 through Sec. 34-389, as amended. Section 34-15 states, in subsection (a), that "a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner" and in subsection (b) that a "limited partner does not participate in the control of the business". These limitations are inconsistent with the characteristics of direct ownership, therefore limited partners are not owners for purposes of section 10.07.02 of the Zoning Code..

CONCLUSION:

The general partner in this situation qualifies as an owner. It is not necessary for all general partners to participate in the operation of the snack shop as they are co-owners.


Timothy P. Lynch
Assistant City Attorney

TPL/sjr
cc: Mayor Sebastian J. Garafalo

REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE

(Submit to Mayor in Duplicate)

GENERAL

JAN 20 1988

MAJOR'S OFFICE

TO: MAYOR'S OFFICE

FROM: Carol M. Szymanski, ZEO

SUBJECT: Snack Shop in an office building

FACTS: (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY & HOW.)

Ms. La Bella has requested approval for a "snack shop" in the Professional Building on Saybrook Road as permitted by reg. # 60.03.04 of the zoning code as an accessory use in an MX zone. However, reg. # 10.07.02 "Ownership" requires that the accessory use "is operated and maintained under the same ownership..." She has stated that one of the partners in the snack shop venture is a "General Partner" and she and others are "Limited Partners."

LAW: (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that you think applies to this Question.)

Zoning
Regulation # 10.07.01 - 10.07.06 and # 60.03.04

QUESTION: (What, in your own words is the precise question you wish to have answered?)

Does a "General Partner" in the Professional Building (or a "Limited Partner") qualify ~~as~~ under the "ownership" requirement of reg. # 10.07.03-?

ESTIMATE OF PRIORITY:

Check one.

EMERGENCY

STANDBY FOR FUTURE ACTION

URGENT

APPLICANT SHOULD KNOW FOR FUTURE ACTI

Date:

1/20/88

Signed:

Carol M. Szymanski

January 20, 1987

To Planning and Zoning:

We are applying for permission to put a Snack Shop in the Middletown Professional Office Building on Saybrook Road. It is allowed under accessory use.

The following outlines the 6 points under Section 10.07.01:

1. Relationship - Incidental use and customarily to have this in a medical facility.
2. Ownership - Use will be operated and maintained under same ownership of office.
3. Does not include that structure is consistent with permanent use.
4. Cannot be occupied for residential use.
5. Not applicable.
6. This will occupy less than 2% of floor area.

The total square footage of the building is 33,000 sq. ft. The size of the space we are renting is 554 sq. ft.

The Snack Shop is a use customary and incidental to the office use. It will be only a takeout use. We will be serving sandwiches, non-alcoholic beverages, salads and deserts. There will be no cooking on the premises. This facility is much needed for the Medical Professional Office Building.

Thank you.

Larry La Bella

EXECUTRICES' DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye, that we, ROSE S. ADORNO and MARION A. CARTA, both of the Town of Middletown, County of Middlesex and State of Connecticut, Executrices under the Will of SALVATORE J. ADORNO, JR., late of said Town of Middletown, in the Probate District of Middletown, deceased, by virtue of an Order of the Probate Court for said District of Middletown dated November 22, 1983, and in consideration of the sum of THREE HUNDRED THOUSAND (300,000.00) DOLLARS, received to our full satisfaction of KALMAR REALTY ASSOCIATES, a partnership having an office and its principal place of business at No. 589 Saybrook Road, in the Town of Middletown, County of Middlesex and State of Connecticut, do grant, bargain, sell and confirm unto the said Grantee all the right, title, interest, claim and demand which the said Salvatore J. Adorno, Jr. had at the time of his decease, or which we, as such Executrices, have or ought to have, in and to a certain piece or parcel of land, together with all improvements thereon, containing 22.80 acres and shown on that certain map on file in the Middletown Town Clerk's Office as #16-2 (Sheet 2 of 2) and as #17-2 (Sheet 1 of 2) entitled: "PLAT: LAND OF EST. SALVATORE ADORNO JR. Saybrook Road - Town of Middletown County of Middlesex - State of Connecticut Date - 9 July 1982 Scale - 1 in. = 40 ft" which map was prepared by Paul Kaye, L.S. Middletown CT, and which said premises are more particularly bounded and described on Schedule A1 (containing 2 pages) attached hereto and which said premises are being conveyed subject to such conditions, restrictions, limitations and/or easements as are more particularly referred to in Schedule A attached hereto.

TO HAVE AND TO HOLD the above granted bargained premises with the appurtenances thereof, unto the said KALMAR REALTY ASSOCIATES, the said Grantee, its successors and assigns, to them and their own proper use and benefit forever. And we, the said Executrices, do hereby covenant with the said Grantee, its successors and assigns, that we have full power and authority, as Executrices aforesaid, to grant and convey the above described premises in manner and form afore-

"\$ 330" Conveyance Tax received
Anthony Lima

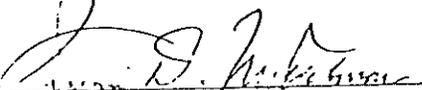
 Town Clerk of Middletown"

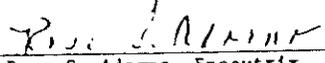
said and for ourselves and our heirs, executors and administrators, do further covenant to warrant and defend the same to the said Grantee, its successors and assigns, against the claims of any person or persons whomsoever, claiming by, from or under us as Executrices aforesaid.

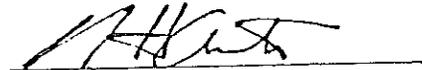
IN WITNESS WHEREOF, We, as such Executrices, have hereunto set our hands and seals this 30th day of November, 1983.

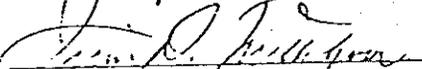
Signed, Sealed and Delivered
In the Presence of:

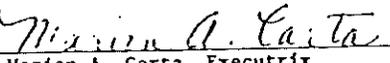
ESTATE OF SALVATORE J. ADORNO, JR.


Irwin D. Mittelman

By  L.S.
Rose S. Adorno, Executrix


Mark H. Quattro


Irwin D. Mittelman

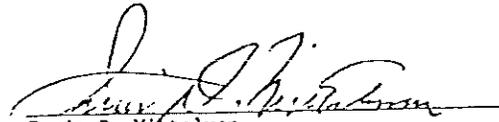
By  L.S.
Marion A. Carta, Executrix


Mark H. Quattro

STATE OF CONNECTICUT)
: ss. Middletown
COUNTY OF MIDDLESEX)

November 30, 1983

The foregoing instrument was acknowledged before me this 30th day of November, 1983, by Rose S. Adorno and Marion A. Carta, Executrices under the Will of Salvatore J. Adorno, Jr.


Irwin D. Mittelman
Commissioner of the Superior Court

Grantee's Mailing Address:

Kalmar Realty Associates
c/o Mark H. Quattro, Esq.
Updike, Kelly & Spellacy, P.C.
One Constitution Plaza
Hartford, CT 06103

SCHEDULE A1

A certain piece or parcel of land, together with all improvements thereon, containing 22.80 acres and shown on that certain map entitled: "PLAT: LAND OF EST. SALVATORE ADORNO JR. Saybrook Road - Town of Middletown County of Middlesex - State of Connecticut Date - 9 July 1982 Scale - 1 in. = 40 ft" which map was prepared by Paul Kaye, L.S. Middletown CT, and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly line of Saybrook Road, which point is marked by an iron pin found being 322.64 feet westerly of a CHD and which said point marks the northwest corner of land now or formerly of Leo & Gertrude Klare and a southwest corner of the herein described premises; continue thence along said land now or formerly of Leo & Gertrude Klare the following courses and distances: 56°46'54" northeast, a distance of 209.80 feet to a point marked by a drill hole; thence 122°28'11" northeast, a distance of 93.23 feet to a point marked by an iron pin found; thence 122°36'09" northeast, a distance of 90.44 feet to a point marked by an iron pin found; thence 122°33'15" northeast, a distance of 124.89 feet to a point marked by an iron pin found;

Continue thence along land now or formerly of Carl O. Hayn 122°17'53" northeast, a distance of 100.37 feet to a point marked by a fence post in a wire fence located in the west line of land of Highmeadow Estates, Inc.;

Continue thence along said land of Highmeadow Estates, Inc. the following courses and distances: 31°45'03" north, a distance of 115.87 feet to a point marked by an iron pin found; thence 31°37'03" north, a distance of 171.60 feet to a point marked by an iron pin found; thence 31°19'01" north, a distance of 94.38 feet to a point marked by an iron pin found; thence 12°58'44" northwest, a distance of 230.09 feet to a point; thence 349°33'52" northwest, a distance of 419.20 feet to a point marked by an iron pin found;

Continue thence along land now or formerly of Ronald L. Klare et al 260°00' 01" southwest, a distance of 70.06 feet to a point marked by an iron pin found; thence 252°35'40" southwest, a distance of 130.31 feet to a point marked by an iron pin found;

Continue thence along land of The Calvary Cemetery of Middletown, Inc. the following courses and distances: 252°35'40" southwest, a distance of 620.00 feet to a point marked by an iron pin set; thence 343°10'55" northwest, a distance of 540.52 feet to a point marked by an iron pin set, which point is in the south line of land of Veterans Home and Hospital Commission;

Continue thence along said land of Veterans Home and Hospital Commission 254°03'17" southwest, a distance of 466.41 feet to a point marked by an iron pin found;

Continue thence along land of the State of Conn. 254°05'26" southwest, a distance of 90.94 feet to a point marked by an iron pin found;

Continue thence along land of the City of M'town 251°49'31" southwest, a distance of 147.06 feet to a point marked by an iron pin set, which point marks a northwest corner of the herein described premises;

Continue thence along land of the State of Conn. 132°18'42" southeast, a distance of 69.44 feet to a point marked by an iron pin set;

Continue thence along land now or formerly of Ruth E. Maloney $134^{\circ}12'40''$ southeast, a distance of 209.70 feet to a point marked by an iron pin found;

Continue thence along land now or formerly of Ruth E. Cunningham $141^{\circ}56'20''$ southeast, a distance of 76.80 feet to a point marked by an iron pin set;

Continue thence along land now or formerly of Jos. Lawrence & Dorothea Leona Smigel the following courses and distances: $128^{\circ}19'05''$ southeast, a distance of 118.00 feet to a point marked by an iron pin set; thence $218^{\circ}19'06''$ southeast, a distance of 8.00 feet to a point marked by an iron pin set; thence $128^{\circ}19'05''$ southeast, a distance of 101.00 feet to a point marked by an iron pin found;

Continue thence along land now or formerly of Stanley & Irene Jaskot $128^{\circ}19'05''$ southeast, a distance of 96.95 feet to a point marked by an iron pin found;

Continue thence along land now or formerly of Jos. & Eliz. Carta $126^{\circ}30'17''$ southeast, a distance of 122.72 feet to a point in an eighteen inch spruce which is in the north line of land now or formerly of Richard & Marion A. Carta;

Continue thence along said land now or formerly of Richard & Marion A. Carta the following courses and distances: $38^{\circ}15'56''$ northeast, a distance of 72.80 feet to a point marked by an iron pin found; thence $124^{\circ}52'11''$ northeast, a distance of 100.00 feet to a point marked by an iron pin re-set; thence $218^{\circ}15'56''$ southwest, a distance of 51.38 feet to a point marked by an iron pin found; thence $255^{\circ}20'05''$ southwest, a distance of 29.78 feet to a point marked by an iron pin found; thence $165^{\circ}20'05''$ southeast, a distance of 22.50 feet to a point marked by an iron pin found; thence $218^{\circ}15'56''$ southwest, a distance of 115.00 feet to a point marked by an iron pin found; and thence continuing 8.65 feet to a point in the east line of Saybrook Road; and

Continue thence along the northeast line of Saybrook Road the following courses and distances: $125^{\circ}57'33''$ southeast, a distance of 163.58 feet to a point marked by a CHD; thence $126^{\circ}08'36''$ southeast, a distance of 250.29 feet to a point marked by an iron pin found which said point marks the point or place of beginning.

SCHEDULE A

A certain piece or parcel of land, together with all improvements thereon, containing 22.80 acres and shown on that certain map on file in the Middletown Town Clerk's Office as #16-2 (Sheet 2 of 2) and as #17-2 (Sheet 1 of 2) entitled: "PLAT: LAND OF EST. SALVATORE ADORNO JR. Saybrook Road - Town of Middletown County of Middlesex - State of Connecticut Date - 9 July 1982 Scale - 1 in.=40 ft" which map was prepared by Paul Kaye, L.S. Middletown CT, and which said premises are more particularly bounded and described on Schedule A1 (containing 2 pages) attached hereto.

For title to said premises, reference is made to the following deeds, all recorded in the Middletown Land Records:

1. Warranty Deed from Leo and Gertrude E. Klare to Salvatore Adorno, Jr. dated February 23, 1954, recorded in Volume 258, Page 28.
2. Warranty Deed from Mary Hellwig a/k/a Marie a/k/a Marie B. Hellwig to Salvatore Adorno, Jr. dated June 19, 1962 and recorded in Volume 324, Page 130.
3. Warranty Deed from Clarence L. Johnson to Salvatore Adorno, Jr. dated May , 1954 and recorded in Volume 347, Page 16.
4. Warranty Deed from Arthur C. Johnson to Salvatore Adorno, Jr. dated September 25, 1972 and recorded in Volume 389, Page 200.

Said herein described and conveyed premises are being conveyed subject to the following:

1. A water pipe easement right as is more particularly described in Deed from David A. Bengtson to Richard F. Carta and Marion A. Carta dated September 2, 1981 and recorded in Volume 608, Page 215.
2. Possible drainage rights and obligations as appear in Agreement between Vincenza DiGiandomenico and Salvatore Adorno, Jr. dated March 19, 1954 and recorded in Volume 347, Page 18.
3. Rights of Way as are more particularly described in Bond For Deed between Leo Klare and Gertrude E. Klare and Salvatore Adorno, Jr. dated December 2, 1953 and recorded in Volume 256, Page 565 and Warranty Deed dated February 23, 1954 and recorded in Volume 258, Page 28.
4. A Right of Way in favor of The Calvary Cemetery Association as referred to in Deed from Joseph Hurt to Leo and Gertrude E. Klare dated September 30, 1948 and recorded in Volume 225, Page 551 and in said Deed recorded in Volume 258, Page 28.
5. Any other conditions, restrictions, limitations and/or easements as of record may appear.
6. The Grantees herein agree to assume and pay the second installment of the taxes on the List of October 1, 1982, the taxes on the List of October 1, 1983 and the taxes due the South Fire District.

Rec'd. for Record Nov. 20, 1983 at 3:52 P.M.
 Recorded by [Signature]
 Town Clerk

- 60.03.04 Incidental services for the convenience of occupants, such as news stands, snack bars, personal service shops, provided that not more than five (5) percent of the total floor area of the building is used
ZONES: TD, M, MX
- 60.04 None
- 60.05 USES BY TEMPORARY PERMIT
The following are permitted as temporary uses:
- 60.05.01 Temporary buildings or yard for construction material or equipment both incidental and necessary to construction within the immediate area, provided, however, that each permit shall be valid six (6) months and shall not be renewed for more than four (4) successive periods at the same location.
ALL ZONES
- 60.05.02 Temporary office or model house, both incidental and necessary for sale or rental of real property within the immediate area provided, however, that each permit shall be valid for a period of not more than six(6) months and shall not be renewed for more than four (4) successive periods at the same location.
ALL ZONES
- 60.06 PROHIBITED USES
Any use not specified as a permitted use, special exception, accessory use, permitted home occupation use or use by temporary permit are prohibited uses.
ALL ZONES

10.06 SITE PLAN APPROVAL
Site Plan approval shall be required in accordance with Section 55 of this Code.

10.07 LIMITATIONS ON ACCESSORY USES.
Any use which is incidental only to Permitted Uses and which complies with all of the following conditions may be operated as an Accessory Use.

10.07.01 RELATIONSHIP
Is clearly incidental and customary to and commonly associated with the operation of the Permitted Uses.

10.07.02 OWNERSHIP
Is operated and maintained under the same ownership and on the same lot as the Permitted Uses.

10.07.03 CONSISTENCY
Does not include structures or structural features inconsistent with Permitted Uses.

10.07.04 RESIDENTIAL OCCUPANCY
Does not include residential occupancy.

10.07.05 DETACHED STRUCTURES
If operated partially or entirely in detached structures, the gross floor area of such detached structures, shall not exceed ten (10) percent of the area of the lot.

10.07.06 ATTACHED STRUCTURES
If operated partially or entirely within the structure containing the Permitted Uses, the gross floor area within such structures utilized by Accessory Uses (except garages and off-street loading facilities) shall not be greater than twenty (20) percent of the gross floor area, but not to exceed three hundred (300) square feet of a single unit dwelling; ten (10) percent of the gross floor area of a structure containing any Permitted Uses other than a single unit dwelling.

10.08 Residential Unit Business Pursuit
The purpose of permitting this accessory activity is to allow certain small scale quasi-business undertakings by the dwelling occupant that will not influence the immediate neighborhood and would not be economically feasible if conducted in a totally business setting.

1. The activity offered shall meet the following criteria:

A) Be conducted solely by an occupant of the dwelling unit without any non-resident assistants or employees and entirely within the dwelling unit, specifically excluding any area designed as a garage.

B) Not present any external evidence of the activity including a separate entrance or the parking of any vehicle which displays any evidence however, a sign shall be permitted no larger than that specified in the sign regulation identifying the activity.

C) Not utilize more than twenty (20) percent or more than three hundred (300) square feet of the gross floor area of the dwelling unit.

GENERAL IMPROVEMENT

Generalia specialibus non derogant /jənərəyliə spəshiyəlyəbəs nɒn dərəgənt/. General words do not derogate from special.

Generalia sunt præponenda singularibus /jənərəyliə sɑnt pri:pənəndə sɪŋgylərəbəs/. General things are to precede particular things.

Generalia verba sunt generaliter intelligenda /jənərəyliə vərbə sɑnt jənərəylədər intələjəndə/. General words are to be understood generally, or in a general sense.

Generalibus specialia derogant /jənərəyləbəs spes(h)iyəyl(i)yə dərəgənt/. Special things take from generals.

General improvement. Exists where primary purpose and effect of improvement is to benefit public generally, though it may incidentally benefit property owners in particular locality.

General Inclosure Act. The English statute, 41 Geo. III, c. 109, which consolidated a number of regulations as to the inclosure of common fields and waste lands.

General indorsement. See Indorsement.

General intangibles. Any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. U.C.C. § 9-106.

General interest. In regard to admissibility of hearsay evidence, a distinction is sometimes made between "public" and "general" interest, the term "public" being strictly applied to that which concerns every member of the state, and the term "general" being confined to a lesser, though still a considerable, portion of the community.

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa /jənərəyləs kləuzylə nɒn pərijədər æd iyə kwɪy æntiyə spəshiyəylədər sɑnt kɒmprəhən(t)sə/. A general clause does not extend to those things which are previously provided for specially. Therefore, where a deed at the first contains special words, and afterwards concludes in general words, both words, as well general as special, shall stand.

Generalis regula generaliter est intelligenda /jənərəyləs rɛgylə jənərəylədər ɛst intələjəndə/. A general rule is to be understood generally.

General jurisdiction. Such as extends to all controversies that may be brought before a court within the legal bounds of rights and remedies; as opposed to *special* or *limited* jurisdiction, which covers only a particular class of cases, or cases where the amount in controversy is below a prescribed sum, or which is subject to specific exceptions. The terms "general" and "special," applied to jurisdiction, indicate the difference between a legal authority extending to the whole of a particular subject and one limited to a part; and, when applied to the terms of court, the occasion upon which these powers can be respectively exercised. See also Jurisdiction.

General Land Office. Formerly an office of the United States government, being a division of the Department of the Interior, having charge of all executive

action relating to the public lands, including their survey, sale or other disposition, and patenting; originally constituted by Act of Congress in 1812. The General Land Office and the U.S. Grazing Service were consolidated into the Bureau of Land Management under the Department of the Interior by 1946 Reorganization Plan No. 3, § 403. See Bureau of Land Management.

General law. A law that affects the community at large. A general law as contradistinguished from one that is special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. A law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law. A law that relates to a subject of a general nature, or that affects all people of state, or all of a particular class, while one relating to particular persons or things of a class is a "special law". *Albuquerque Metropolitan Arroyo Flood Control Authority v. Swinburne*, 74 N.M. 487, 394 P.2d 998, 1000.

General lien. A general lien is a right to detain a chattel, etc., until payment be made, not only of any debt due in respect of the particular chattel, but of any balance that may be due on general account in the same line of business.

Generally Accepted Accounting Principles (GAAP). The conventions, rules and procedures necessary to define accepted accounting practices at a particular time; includes both broad and specific guidelines. The source of such principles is the Financial Accounting Standards Board.

Generally Accepted Auditing Standards. The standards, as opposed to particular procedures, promulgated by the AICPA which concern the auditor's professional qualities and the judgment exercised by him in the performance of his examination and in his report.

General manager. One having general direction and control of corporation's affairs, and who may do everything which corporation could do in transaction of its business. *Continental Supply Co. v. Forrest E. Gilmore Co. of Texas*, Tex.Civ.App., 55 S.W.2d 622. A manager for all general purposes of the corporation.

General partner. One of two or more persons who associate to carry on business as co-owners for profit and who are personally liable for all debts of the partnership. Uniform Partnership Act, § 6(1), (15). To be contrasted with "limited" partner. See Partner.

General plea. Type of pleading such as a general denial which controverts *all* of the averments of the preceding pleading (e.g. of the complaint). See Fed.R. Civil P. 8(b).

General power of appointment. One exercisable in favor of any person the donee may select. *Johnstone v. Commissioner of Internal Revenue*, C.C.A.9, 76 F.2d 55, 57.

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