

June 6, 2023

Sent Via Hand Delivery & Email (pbzba@townofclinton.com)

Hon. Paul Thomas, Chairman and
Town of Clinton Planning Board Members
1215 Centre Road
Rhinebeck, NY 12572

***Re: Medical Arts Sanitarium, Inc. d/b/a/
Cornerstone of Rhinebeck (“Cornerstone”)
73-93 Serenity Hill Road, Clinton, NY (“Property”)
Parcel Identification No.: 6469-00-531763 & 617725
Application for Site Plan Approval & Special Use Permit (“Application”)***

Dear Chairman Thomas and Members of the Planning Board:

This Firm represents Cornerstone in connection with the above-referenced Application. As you may recall, this Application, which has been pending since November 2021, seeks retroactive approval, pursuant to Zoning Code Section 250-31, for Cornerstone’s increase in maximum bed capacity from 66 beds to 99 beds.

Pursuant to the discussions during the April 27, 2023 pre-submission conference, we respectfully request that the Planning Board schedule a work session in connection with the Application either at the June 20, 2023 Planning Board meeting, or at a special meeting shortly thereafter.

The following documents are submitted in connection with the Application. We note that for this Board’s convenience, Cornerstone is re-submitting its 2 comprehensive submissions from November 2021 and March 2022, respectively.

- EXHIBIT 1 Owner Authorization, dated June 5, 2023
- EXHIBIT 2 Site Plan/Special Permit Application Form, dated June 5, 2023¹
- EXHIBIT 3 EAF Report, prepared by prepared by LaBella Associates (“LaBella”), dated June 6, 2023 (“EAF Report”), with Full Environmental Assessment Form (“EAF”)

¹ Although the Application is already pending, the Applicant is resubmitting the Application Form, together with an up-to-date checklist/waiver request.

- EXHIBIT 4 Community Impact Statement (June 2023)²
- EXHIBIT 5 Existing Conditions Site Plan (1 sheet), prepared by LaBella, dated June 6, 2023 (“Site Plan”)³
- EXHIBIT 6 Current OASAS Licenses
- EXHIBIT 7 Letter from former Town Municipal Code Enforcement Officer John J. Fenton, dated Mar. 6, 2021 (“2021 Determination”)
- EXHIBIT 8 Letter from former Town Municipal Code Enforcement Inspector Michael Cosenza, dated Apr. 1, 2022 (“2022 Determination”)
- EXHIBIT 9 Findings and Decision of Town ZBA, dated Aug. 31, 2022 (“ZBA Interpretation”)
- EXHIBIT 10 Town of Clinton Local Law No. 1 of 2023 (Revised Amendment to Section 250-31 of the Town Code - Alternate Care Facilities), adopted Feb. 14, 2023
- EXHIBIT 11 Letter from NY Office of Addiction Services and Supports (“OASAS”), dated Feb. 11, 2022
- EXHIBIT 12 Letter from Dutchess County Department of Behavioral & Community Health (“County DBCH”), dated Jan. 28, 2022
- EXHIBIT 13 Title Report Schedule “B-II,” listing easements and/or deed restrictions
- EXHIBIT 14 Cornerstone Nov. 10, 2021 Planning Board Submission, with annexed Schedules A through F (“Nov. 2021 Submission”)
- EXHIBIT 15 Cornerstone Mar. 22, 2022 Planning Board Submission, with annexed Schedules A through G (“Mar. 2022 Submission”)

² A Community Impact Statement was previously submitted to the Planning Board with Cornerstone’s Nov. 2021 Submission. (*See* Schedule D to Exhibit “14”). Exhibit “4” supersedes the previously submitted Statement.

³ The Site Plan submitted herewith supersedes the previously submitted Overall Site Plan, prepared by Cummings Engineering, P.C., dated Mar. 14, 2022. Although no physical changes are proposed to the Facility or the Property, the purpose of the Site Plan is to document and memorialize the conditions as they presently exist.

BACKGROUND

Again, the subject Application has been pending before the Board since November 2021, and the Public Hearing that was opened in April 2022 remains open. In light of the passage of time and intervening procedural history, and for the benefit of new Board members, Cornerstone provides these brief background facts to refamiliarize the Board with the Application.

The Property and Facility

Cornerstone's Property comprises ±40 acres and is in the Town's Conservation Agricultural Residential (C) District. Cornerstone operates a fully licensed chemical dependence, alcoholism, and substance abuse rehabilitation and detoxification facility on the Property ("Facility").⁴

Cornerstone currently holds, for example: (i) a Chemical Dependence Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services (now known as OASAS); (ii) an Opiate Treatment Program Certification from the U.S. Department of Health and Human Services; (iii) a Controlled Substance License from the New York State Department of Health ("NYSDOH"); (iv) certification as an education and training provider by OASAS; (v) a limited service laboratory registration with the NYSDOH; and (vi) accreditation from the Commission on Accreditation of Rehabilitation Facilities ("CARF"), a highly regarded international organization for the oversight of behavioral health facilities.

The Facility is classified in the Zoning Code as an "Alternate Care Facility (ACF)."⁵ See Zoning Code §§ 250-31, 250-105. ACFs are neither principal permitted uses nor special permit uses currently allowable in the C District. As discussed, *infra*, the Town has determined that the Facility is a legal preexisting nonconforming use.

Cornerstone's Operation of the Facility

Cornerstone has been a respected leader and innovator in the drug and alcohol dependence treatment field for more than 40 years. Its mission is to help people change their lives by providing them with the tools for a healthy, happy, and drug-free life.

Cornerstone has been operating the Facility in the Town for over 25 years. Prior to Cornerstone's ownership, Rhinebeck Lodge for Successful Living ("Rhinebeck Lodge") operated the Facility for 15 years with the same services and type of population now at Cornerstone. The Facility has thus been a part of the Town and a member of the Town of Clinton community for over 40 years.

⁴ Copies of Cornerstone's current licenses are annexed as Exhibit "6." Copies of prior licenses are annexed as Schedule C to Exhibit "14," and have previously been submitted to the Board.

⁵ The Facility further falls under the "Rehabilitation Services Facility" ACF subtype. See Zoning Code § 250-105.

At the time Cornerstone purchased the Facility in 1997, Rhinebeck Lodge was licensed by OASAS for 8 detoxification and 58 rehabilitation beds (for a total of 66 beds). Presently, Cornerstone is licensed by OASAS, with approval from and County DBCH for a maximum of 6 detoxification beds and 93 rehabilitation beds (for a total of a maximum capacity of 99 beds).⁶

As further discussed, *infra*, Cornerstone did not increase its bed capacity unilaterally. Cornerstone duly filed the necessary documents and followed the procedures required by OASAS and County DBCH for approval to increase the capacity of the Facility. In 2006, Cornerstone sought and received approval to increase the maximum number of beds from 66 to 96. An additional 3 beds were added in 2016. Thus, Cornerstone has been operating at essentially the same capacity (save for the 3 beds added in 2016) for approximately 17 years and continues to provide rehabilitation and detoxification services for its residents, just like Rhinebeck Lodge did before it.

Since increasing the bed capacity 17 years ago, Cornerstone has received very few complaints filed against it or directly conveyed to it by its neighbors. Nor has it been cited by the Town for any health, safety, or zoning violations, except for a Violation Notice in 2021 directing Cornerstone to go before this Board to increase its bed capacity in accordance with Zoning Code Section 250-31, which is why the instant Application was submitted in November 2021.

Town Determines That the Facility Is a Preexisting Nonconforming Use

For 25 years, the Town has recognized and acknowledged that Cornerstone's Facility is a legal, preexisting nonconforming ACF use. As early as May 1998, former Zoning Enforcement Officer Mary Ellen Cookingham determined that the use of the Property "as an '[A]lternate Care Facility' for the purposes of rehabilitation services to alcohol and drug dependent persons is a preexisting nonconforming use. The facility was established on or about 1976 as a 34-bedrooms/68 bed occupancy and continues to operate as such." (1998 Cookingham Letter, Schedule A to Exhibit "15"). The Facility's status as a legal, preexisting nonconforming ACF use has been repeatedly confirmed by subsequent Zoning/Code Enforcement Officers, including in 2021 and 2022. (*See* Exhibit "7" at 2; Exhibit "8" at 2).

Specifically, the 2022 Determination held that: (i) the Facility is a preexisting nonconforming use; (ii) the Facility is an ACF as defined under Section 250-105 of the Zoning Code; (iii) Cornerstone's increase from a maximum of 66 beds to 99 beds between 2006 and 2016 was (and is) permissible, so long as approval is obtained from the Planning Board pursuant to the Section 250-31; and (iv) the nonconforming use of the Property had not been impermissibly expanded. (*See* Exhibit "8").

Most recently, following an appeal by certain neighbors of the 2022 Determination, as discussed further, *infra*, the ZBA definitively concluded, *inter alia*, that the Facility is a preexisting nonconforming ACF, and thus permitted to continue operation. (*See* ZBA Interpretation at 2, ¶ 3; *see also id.* at 18, ¶ 48, Exhibit "9"). Consistent with ZEO Cookingham's determination, the ZBA

⁶ County DBCH does not license or regulate Cornerstone's operation. However, County DBCH must approve, and has approved, any increase in additional capacity prior to same being granted by OASAS,

Interpretation states that as a preexisting nonconforming use, Cornerstone is entitled to a 68-bed maximum capacity.

Cornerstone Increases Its Maximum Bed Capacity

As noted, *supra*, after purchasing the Facility, Cornerstone, without any physical expansion of the Facility or change in its basic operations, increased the number of maximum beds from the 66 beds operated by Rhinebeck Lodge to the current 99 beds. Each of these increases were accompanied by Cornerstone obtaining the requisite approvals from both OASAS and the County DBCH.

Cornerstone believed in good faith – albeit incorrectly – that OASAS approval of the increase in capacity preempted Zoning Code Section 230-31(B)(5), since it was an operational issue, not a land use issue, and there was no physical or other expansion of the building, or its operations in general. Once the Town made clear to Cornerstone that Planning Board approval was necessary even absent any physical alterations to the Property, it submitted the instant Application to this Board for an “increase in the resident population” pursuant to the Zoning Code Section 250-31(B)(5).

PROCEDURAL HISTORY

Commencement of Planning Board Proceedings

Cornerstone first submitted its Application pursuant to Section 250-31 in November 2021 (Exhibit “14”). The Application was supplemented by the March 2022 Submission. (Exhibit “15”). Cornerstone appeared before this Board at meetings on December 7, 2021, April 5, 2022, and April 19, 2022.

At the April 19, 2022 meeting, the Board opened the Public Hearing on the Application. Numerous members of the public spoke both for and against the Application. The meeting adjourned without the Board closing the Hearing, and as such, it remains open, and those comments are already incorporated into the Administrative Record of this Application.

Certain Neighbors Appeal 2022 Determination to ZBA

Following the April 19, 2022 meeting, a small group of neighbors, represented by Van DeWater & Van DeWater LLP, and who spoke in opposition to the Application at the Public Hearing, appealed Mr. Cosenza’s 2022 Determination to the ZBA. At the request of the Town, Cornerstone voluntarily stayed the proceedings before this Board while the ZBA proceedings were held.

Following the proceedings at the ZBA, in addition to finding that the Facility was a preexisting nonconforming use, the ZBA upheld the 2022 Determination, *except that* it found that contrary to the 2022 Determination: (i) Cornerstone’s increase in maximum beds from 66 to 99 was an “impermissible intensification of Cornerstone’s use under [Zoning] Code [Section] 250-

80(B) and an impermissible enlargement under [Zoning] Code Section 250-81(A)” (ZBA Interpretation at 18, ¶ 46; *see also id.* at 16-17, ¶¶ 42-44, 51); and (ii) Cornerstone is precluded as a preexisting nonconforming ACF from seeking approvals under Section 250-31(B)(5) (*see id.* at 17-18, ¶¶ 45-47).

Notably, the ZBA expressed that it was constrained by the language of the Zoning Code when it determined that nonconforming ACFs could not avail themselves of the Planning Board procedures to increase the population, change the type of population, and/or expand the physical facility.

Cornerstone Commences Article 78 Proceeding and Town Board Amends Section 250-31

Following its issuance, Cornerstone commenced a proceeding pursuant to N.Y. C.P.L.R. Article 78 challenging the ZBA Interpretation.

The Town Board acknowledged the ZBA’s position that it was constrained by the plain language of the Zoning Code when the ZBA determined that Section 250-31 was inapplicable to preexisting nonconforming ACFs. Thus, in furtherance of reaching an amicable settlement of the Article 78 proceeding, and apparently consistent with the intent – but not the language – of the Zoning Code, on February 14, 2023, the Town Board adopted Local Law 1 of 2023 (“Local Law”) amending Section 250-31. (*See* Exhibit “10”). Specifically, the Local Law now provides that:

- Section 250-31 is applicable to both ACFs permitted by special use permit in the subject zoning district, as well as preexisting nonconforming ACFs (such as Cornerstone);
- Any ACF seeking approvals under Section 250-31 that does not already have prior site plan approval and/or a special use permit must obtain said approvals from the Planning Board;
- In addition to considering the general site plan and special use permit provisions of the Zoning Code (*see* Zoning Code §§ 250-96, 97), the Planning Board must also consider whether any increase in the resident population, change in type of population, and/or any expansion of the facilities would result in “any significant additional adverse impacts to the surrounding neighborhood if the application is granted;”
- Any expansion of the resident population of a nonconforming ACF shall not exceed 50% of the population that existed as of the effective date of the Zoning Code; and
- A nonconforming ACF receiving approvals under Section 250-31 “shall be deemed to be in compliance with § 250-80 and § 250-81(A),” which govern nonconforming uses.

See Local Law, Exhibit “10.”

Since the Local Law now permits Cornerstone to proceed before this Board to continue to process the instant Application, Cornerstone withdrew the Article 78 proceeding.⁷

APPLICATION CONFORMS TO AMENDED SECTION 250-31

For the reasons set forth herein, as well as in all prior submissions, Cornerstone submits that the Facility complies with Section 250-31, including that the increase in maximum beds from 66 to 99 has not resulted in any significant adverse impacts to the neighborhood.

To demonstrate the lack of any impacts, Cornerstone retained LaBella to, *inter alia*, prepare the EAF Report annexed as Exhibit “3.”⁸ The EAF Report analyzed the Facility’s consistency with the Zoning Code and the surrounding neighborhood, as well as any potential impacts to utilities (water usage and wastewater generation), surface and groundwater resources, and vegetation and wildlife. Based on the professional opinion of LaBella, the EAF Report concludes: “There is no empirical evidence that the increase from 66-96 beds in 2006, and to 99 in 2016, had any significant adverse environmental impact on the neighborhood in terms of community character, water, wastewater, aquatic resources, floodplain, or vegetation and wildlife. Furthermore, the facility meets the requirements of Zoning Section 250-31.” (EAF Report at 7).

Cornerstone respectfully refers the Board to the EAF Report for a full discussion, which is summarized below. Also addressed below is the most recent data pertaining to EMS services, as well as historic trends in actual population at the Facility (versus maximum capacity).

Zoning Compliance and Consistency with the Neighborhood

Although ACFs are not permitted as-of-right or by special use permit in the applicable C Zoning District, as discussed, *supra*, Cornerstone’s Facility has been deemed by the Town to be a legal preexisting nonconforming use. As discussed in detail in the EAF Report, the Facility is also consistent with the Town’s Comprehensive Plan. (See EAF Report at 3-4). Notably, the Facility has been in operation for over 40 years on the Property and is consistent with and part of the fabric of the surrounding neighborhood. In fact, as mentioned above, until recently, Cornerstone has received few if any complaints from its neighbors, and has received no zoning violations other than the 2021 Notice of Violation that resulted in the filing of the instant Application.

Cornerstone, however, is sensitive to the fact that it has residential neighbors. Over the years, Cornerstone has taken numerous steps to mitigate any perceived impacts from the Facility on the neighbors. These steps include, for example: (i) fixing the omnidirectional lights on the

⁷ Cornerstone’s withdrawal of the Article 78 proceeding was without waiver of Cornerstone’s position that certain of the findings in the ZBA Interpretation were legally incorrect.

⁸ A revised Full EAF is annexed to the EAF Report and supersedes the previously submitted Full EAF annexed as Schedule E to Exhibit “15.”

Property to ensure there would be no spillover onto neighboring properties; (ii) changing the time patients are allowed outside to minimize noise impacts in the evenings; (iii) changing the day of the month that the generator is tested; and (iv) requesting that the garbage collection company be more respectful of the residential setting in which Cornerstone is located. In addition, in connection with the instant Application, Cornerstone has proposed a new tree line of evergreens between Cornerstone's property and the adjacent neighbors' house for additional noise and visual mitigation.

Regarding compliance with Section 250-31, the EAF Report addresses Cornerstone's compliance with the enumerated "General Provisions" in Section 250-31(B) of the Zoning Code. (See EAF Report at 2-3). In addition, annexed as Exhibit "4" is a Community Impact Statement in conformance with Section 250-31(C).

Utilities

The EAF Report concludes that there is no empirical evidence that the increase in maximum capacity from 66 to 99 beds had a significant adverse impact regarding water usage or wastewater generation.

Specifically, Cornerstone's well is permitted by Dutchess County Department of Health ("County DOH") as a public water supply ("PWS") and is subject to regular monthly sampling. (See EAF Report at 5). Regarding wastewater generation, documentation from County DOH also demonstrates that the Facility is operating within the limits approved by County DOH as well as Cornerstone's NYSDEC SPDES permit. (See *id.* at 5-6).

Surface Water Resources and Floodplains

The EAF Report concludes that there is no empirical evidence that the increase in maximum capacity from 66 to 99 beds had a significant adverse impact regarding surface water resources and floodplains. (See *id.* at 6-7).

Although recreational uses are permitted on Silver Lake, when Cornerstone took over operations of the Facility in 1997, it ceased all use by staff and patients of the Lake. Thus, regardless of the number of patients on the Property, there is no usage of the Lake whatsoever.

The NYSDEC has recognized that recreational uses and aesthetics of the Lake have been "reported as being affective by excessive aquatic weed growth." (EAF Report at 6 (quoting EAF Report, Attachment B)). These impacts, however, are attributed by NYSDEC to "[i]nadequate and/or failing on-site septic systems serving residences along the shore." (*Id.* (emphasis added)). Importantly, whereas Cornerstone is subject to regular water sampling in connection with its PWS permit, the residences on the Lake are not subject to such oversight. The water sampling demonstrates that Cornerstone is not adversely contributing to any adverse groundwater conditions. (*Id.*).

Additionally, no construction has occurred or is proposed in connection with the increase in maximum bed capacity. There are no new activities proposed in any regulated wetland or lake buffer area. There is no evidence that the increase in maximum bed capacity has had any impact on surface waters. (*Id.*).

Vegetation and Wildlife

As discussed in the EAF Report, since no construction occurred or is proposed in connection with the increase in maximum bed capacity, there has been no impact to vegetation or wildlife. (*Id.* at 7).

Emergency Services

At the request of Town Staff, Cornerstone reached out to NDP EMS to obtain the most recent number of EMS responses to the Facility. Cornerstone has been advised that in 2022, there were 170 EMS responses to the Facility, and there have been 60 responses in 2023 as of May 9, 2023.

Cornerstone notes that as a for-profit entity, it pays its full share of taxes – \$85,212.13 in 2023 alone.⁹ Even assuming that the increase in beds resulted in an additional need for emergency services, any purported impact would be offset by Cornerstone’s contribution to the tax base. It also cannot be ignored that by receiving treatment at the Facility, fewer individuals require EMS services than if they were not under the care of Cornerstone.

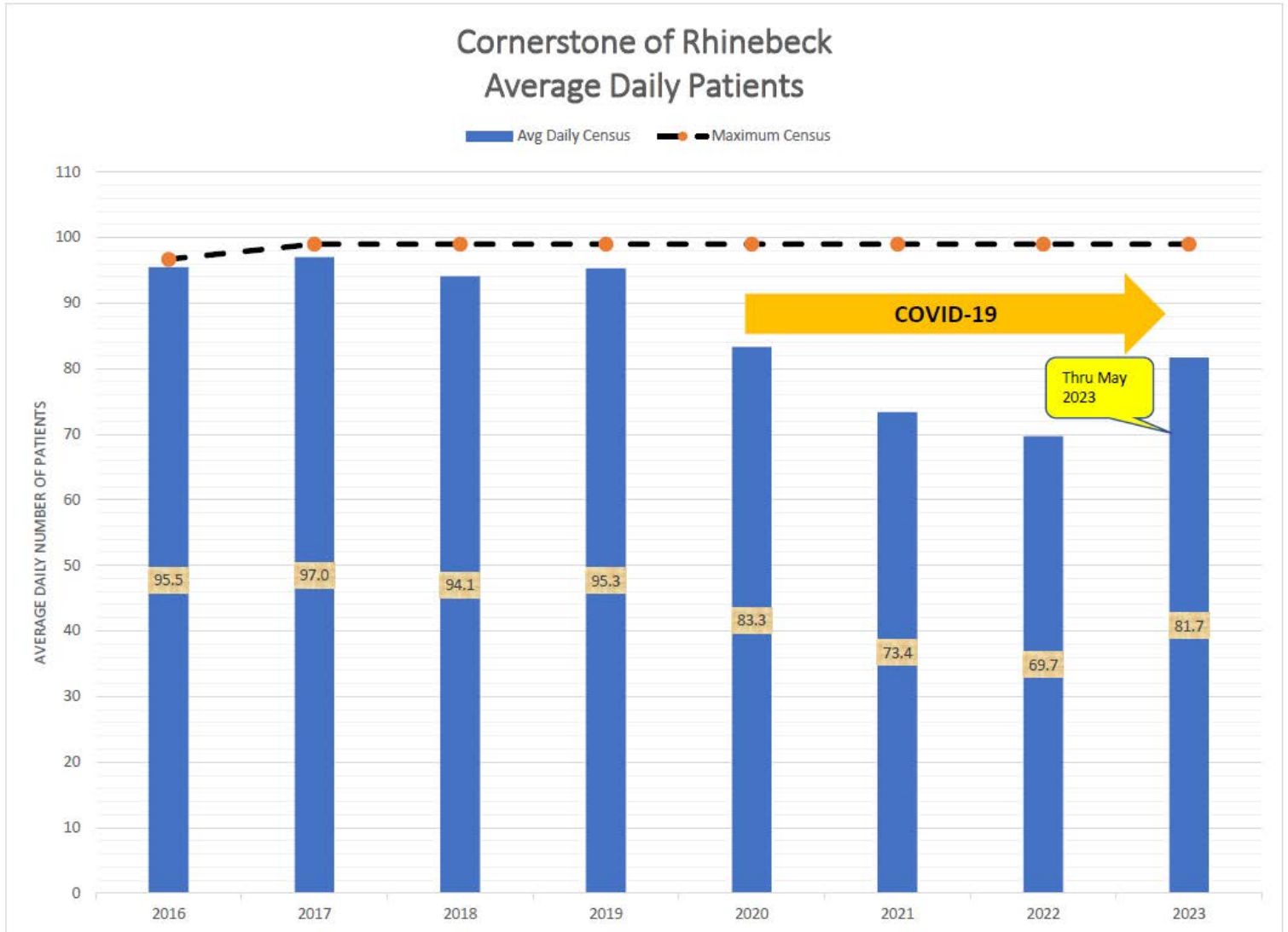
Cornerstone prefers to err on the side of caution when a health situation is presented. Cornerstone will continue to endeavor to use private transportation for non-emergency cases.

Historic Population Counts

Although the number of beds denotes the maximum number of residents that could be treated at any given time (99), the number of beds actually occupied fluctuates.

The chart on the following page shows the average number of beds occupied daily on an annual basis from 2016 through 2023 (to date):

⁹ For 2023, Cornerstone will pay \$58,561.18 in school taxes, and \$26,650.95 in Town taxes.



Further breaking down those figures, in 2022 and to date in 2023, for example, the average number of daily patients per month were as follows:

2022-2023		
Month	Avg. Patients/Day	Percent Occupancy
2022-January	57.1	57.71
2022-February	68.9	69.59
2022-March	81.0	81.79
2022-April	71.9	72.63
2022-May	75.2	75.92
2022-June	76.5	77.27
2022-July	64.3	64.97
2022-August	69.2	69.86
2022-September	67.9	68.59
2022-October	77.5	78.23
2022-November	70.1	70.81
2022-December	57.5	58.06
2023-January	70.1	70.77
2023-February	77.1	77.85
2023-March	78.0	78.79
2023-April	88.0	88.86
2023-May	91.3	92.20

Occupancy figures have, of course, been impacted by the COVID Pandemic since 2020. But Cornerstone is observing that the numbers are now returning to pre-Pandemic figures. As noted in the above chart, for example, in May 2023, the average daily occupancy was 91.3 patients, or 92.2% occupancy. Based on these figures, there remains a real need for the beds that Cornerstone provides for those who will benefit from Cornerstone’s substance and alcohol dependency treatment services. This need has been confirmed by both OASAS and County DBCH. (See Exhibits “11” & “12”).

CONCLUSION

Cornerstone submits that there is no empirical evidence that the increase from a maximum of 66 beds to 96 beds in 2006, or to 99 beds in 2016, resulted in any significant adverse impacts to the surrounding neighborhood, and that its Application pursuant to Section 250-31 should be granted.

Accordingly, Cornerstone respectfully requests that a work session be scheduled at the earliest possible date to discuss with the Board the foregoing, as well as all prior documentation submitted in connection with its Application, and for a continuation of the Public Hearing to be scheduled shortly thereafter.


As it always has, Cornerstone will continue to work cooperatively with the Board, its Staff, and the community to continue to bring its vital life-saving services to those who need them.

We look forward to answering any questions the Board has at the work session. If you have any questions in the interim, or require any additional information, please do not hesitate to contact the undersigned. Thank you for your consideration.

Respectfully submitted,

ZARIN & STEINMETZ LLP

By:



Jody T. Cross

cc: (via email)
Cornerstone of Rhinebeck
Shane Egan, Esq.
CPL