

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
May 26, 2022**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Norma Dolan

Ron Mustello

Russel Tompkins

MEMBERS ABSENT

Charles Canham

Arthur Weiland

ALSO PRESENT

Arlene Campbell, Secretary

Eliot Werner, Liaison Officer

Chairman Malcarne called the meeting to order at 7:40 pm.

Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves. He also acknowledged the large crowd in the audience.

Chairman Malcarne asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

VARIANCE:

None

INTERPRETATION:

Medical Arts Sanitarium Inc. d/b/a Cornerstone of Rhinebeck - property located at 73-93 Serenity Hill Road, **Tax Grid No. 6469-00-531763.**

The appellant is requesting an interpretation of Sections 250-31 (5) and 250-81 of the Town of Clinton Town Code and the review of a determination made by the Municipal Code Enforcement Officer dated April 1, 2022 regarding an increase in the number of patient beds to ninety-nine (99).

Sec. 250-31 – B(5) Alternate Care Facility - Any increase in the resident population, change in type of population, and/or any expansion of the facilities shall require application to the Planning Board for consideration of a new special

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use permit and shall require re-examination of the site plan by the Planning Board.

Sec. 250-81 (Non-conforming Use) – (A) Shall not be enlarged or extended, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, except as provided in this article. For the purpose of this section:

Sec. 250-81 –C- Shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals, and then only to a use which, as determined by the Zoning Board of Appeals, maintains or reduces the nonconformity. Such change of nonconforming use approval by the Zoning Board of Appeals shall be prior to any other approvals required by the Planning Board.

Sec. 250-81 (D) Shall not be reestablished if such use has been discontinued for any reason, whether through vacancy or cessation of use, for a period of one year or longer, or has been changed to, or replaced by, a conforming use for any period of time. The intent to resume a nonconforming use does not confer the right to do so.

Kyle Barnett from Van DeWater and Van DeWater, representing the Silver Lake community is the appellant who requested an interpretation of Sec. 250-31 and Sec. 250-81 that relates to the decision of the Municipal Code Enforcement Inspector letter dated April 1, 2022.

Jodi Cross from Zarin and Steinmetz, representing Cornerstone along Mr. Purnell an executive from Cornerstone were also present.

Shane Egan was in attendance to represent the Town.

Chairman Malcarne began by giving an overview of the duties and responsibilities of the Zoning Board of Appeals. One of the duties and responsibilities of the ZBA is an administrative review whereby anyone or a person who questions or disagrees with the decision of the Zoning Administrator (Municipal Code Enforcement Inspector) about a particular matter asks the Zoning Board of Appeals to do an administrative review. Part of the process is collecting and reviewing all the information received and review the zoning codes in making a decision. The Zoning Board of Appeals can affirm or reverse the determination appealed. Chairman Malcarne noted that if there is a continued disagreement, then this will go to Article 78 proceeding.

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Chairman Malcarne explained the application on hand as stated above. The Municipal Code Enforcement Inspector (MCEI) in his letter dated April 1, 2022 made a determination that the increase in patient beds to its current capacity of 99 is not an expansion of the pre-existing nonconforming use under Sec.250-31 and Sec. 250-81 of the Town Code. A group of neighbors is in disagreement with this determination as indicated in the letter of Van De Water and Van De Water which states that the code does not allow an expansion of nonconforming use. Essentially, the ZBA has to make an interpretation of the code whether the determination to increase the number of patient beds to 99 beds is or is not an expansion of a nonconforming use.

Chairman Malcarne indicated the huge file about the history of Cornerstone along with all the different certificates that Cornerstone has. There is also the submission from Van DeWater and Van De Water about the concerns from the neighboring properties. This is basically a packet about the neighbors' disagreement about the MCEI's decision. Chairman Malcarne also acknowledged the information received from Zerine and Steinmetz who are basically agreeing with the decision of the Municipal Code Enforcement Inspector.

Chairman Malcarne acknowledged the presence of the large crowd and stated that the board wants to hear everybody's thoughts and concerns. They want everybody to feel that they are heard. He underscored that the board is only doing an administrative review of the particular letter dated April 1, 2022. If the comment pertains to something else, Chairman Malcarne stated that this is not the venue for that and asked the public to not get offended if he cuts them off and redirects to another comment. The board wants to hear from everyone given the large crowd in the room.

Chairman Malcarne asked Mr. Barnett to come up and explain his application.

Kyle Barnett from Van DeWater and Van DeWater LLP thanked the chairman for his introduction and summation of the review process. He also acknowledged the presence of the board members and introduced himself. He stated that he represents quite a few of the neighbors of Cornerstone who have concerns about the expansion. He discussed the submission that he sent to the board. He also indicated the recent letter that was submitted by Zarin and Steinmetz. He added

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that he also has another letter to submit that will provide more detail in response to the recent letter submitted by Zarin and Steinmetz this way he doesn't have to consume the entire evening going over every facts. He encouraged the board to feel free to ask him if there are any confusion, questions or concerns.

Mr. Barnett stated that there is a certain use of a particular property, in this case, it was previously Rhinebeck Lodge. They were using the property for whatever use that may be. Subsequent to that and at some point in time, the town adopts a zoning code. Mr. Barnett stated that what the courts have long since held is that it would be unfair to the owner of the property who is using the property to be penalized if the zoning code that comes into place suddenly prohibits the particular use. This is called grandfathered or legal nonconforming use. They are entitled to continue that use unless there is an abandonment or cessation of use. However, there are some restrictions and these restrictions are provided in the law. As evident in the Town Code, see "Elimination of nonconforming use", Mr. Barnett stated that the goal of the town code is to eliminate nonconforming use. This is actually the goal of many state courts. This is important because it allows the town to put certain restrictions on nonconforming use going forward. This puts a limitation on things like enlargement or expansion of nonconforming use.

Mr. Barnett stated that Rhinebeck Lodge (prior owner) provided rehabilitation services for alcohol per a letter dated 1977. The prior owner made it clear in a subsequent statement that this will never be going to be a medical facility or provide any type of medical support or services. The use of rehabilitation center was essentially in place when the zoning code took place. This use became the grandfathered in as nonconforming use. That use continued for maybe two decades.

Mr. Barnett believes that it was shortly before Rhinebeck Lodge was sold to Cornerstone in the mid-90s that the facility received a certificate for a medical detox services. This is obviously an entirely different use from what existed in the early 90s or prior to that date. It is a use that no way shape or form is permitted in an Alternate Facility or in the Conservation Agricultural Residential (C) Zone District..

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Mr. Barnett stated that hospitals or medical facilities are prohibited in the C Zone District unless these are prior nonconforming uses. In this case, this is not allowed since this was not the use that existed when the zoning code was in place.

Mr. Barnett indicated the case that was cited by Mr. Zarin. He responded, "Yes, if you have a hospital or sanitarium. If you provide certain medical services and 10 or 20 years after provide another type of medical service, Mr. Barnett opined that it is okay since these are all medical services. What you can't do is say, you have a pre-existing use to have a farm full of pigs and then eventually start raising sheep, Mr. Barnett opined that you cannot do if that use is a nonconforming use. You have to stay within the confines of the use. Anything beyond that is an illegal expansion of use. He indicated the cases that he provided in his packet. These cases are very clear.

Mr. Barnett discussed the determination made by the former ZEO Cookingham in 1998 that Rhinebeck Lodge for Successful Living as an "Alternate Care Facility" for the purpose of the rehabilitation services for alcohol and drug dependent person is a pre-existing nonconforming use. In the MCEI Cozensa's determination which is the subject of this appeal, Mr. Barnett stated that Cornerstone also falls under the subcategory of Rehabilitation Services Facility (RSF).

Sec. 250-105 Definition states:

ALTERNATE CARE FACILITY (ACF) - A facility designed or used for housing persons ("ACF clients") who are unable to live and work independently at a particular time and for the providing for the specific needs of these persons. For purposes of this chapter, this definition shall include nursing homes and the following types of supervised facilities:

G. REHABILITATION SERVICES FACILITY (RSF)

A professionally planned and operated treatment facility designed to improve the functioning of physically, mentally, or emotionally disabled persons in their skills of daily living, including alcohol abusers, drug-dependent persons, the mentally ill, and the developmentally disabled.

Mr. Barnett commented that nowhere in these definitions (ACF and RSF) or anywhere else in the Town Code that reference medical services or hospitals being a permitted use in the C Zoning District. Detox as aptly pointed out in his submission is a medical procedure that is completely different than of a

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residential use. It requires medical support and medical assistance whereas a rehabilitation does not. We now know that medical support is not part of an ACF and Cornerstone is designated as an ACF. It did not include medical services when it was grandfathered in and doing so now is an illegal expansion of nonconforming use.

Mr. Barnett discussed the determination of MCEI Cozensa. This determination completely overlooks the code and just simply says "Well, that's what they're doing in 1998 and therefore if that's what they were doing in 98 then it's okay today."

Mr. Barnett commented that the MCEI failed to do an investigation of what was the Cornerstone was doing before the zoning code came into effect.

Mr. Barnett expressed his disagreement with the MCEI's determination that the increase in the number of beds from 66 to 99 beds is not an expansion of nonconforming use. Mr. Barnett agreed with the former MCEI determination that you need a site plan and special permit approval to do any kind of enlargement. If you're an ACF regardless of where you're located whether you're a prior nonconforming use can accomplish this without violating the zoning law. What was overlooked is whether or not this is permitted for pre-existing nonconforming use. He underscored that this is what gets lost in the MCEI Cozensa's letter.

Mr. Barnett indicated the determination by former ZEO Fennell in 2005 regarding Cornerstone's request in the number of beds that this is an illegal expansion of nonconforming use. He remarked that Mr. Cosenza completely ignored the precedent and failed to acknowledge that. He didn't even explained why he was ignoring it. Mr. Barnett stated that another issue with Mr. Cosenza's letter is about the increase in the intensity that is not considered enlargement. Town Code limits the intensity of nonconforming use.

Mr. Barnett discussed the cases cited in the Zarin and Steinmetz's letter. These cases are correctly cited and correctly referenced the particular cases that state increase in intensity is not considered enlargement or expansion in nonconforming use. Mr. Barnett said that but what these cases do not address a situation where the town specifically limits the intensity of the use. If the town code states that this provision intended to limit the intensity of the use, then the nonconforming use is simply not permitted to ignore that.

Mr. Barnett commented that an increase in the number of beds from 66 to 99 is a 50% increase in population. This is a more intense use. He added that providing medical services is also an increase in the intensity for obvious reason. The Town code intended to limit the intensity of the use. He read Sec. 250-80-B (General Provision) which states:

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Sec. 250-80-B states...."The intent of this article is to limit, by not increasing, nonconforming uses and to eliminate such uses as speedily as possible, but at the same time to alleviate economic hardship to an existing nonconforming use by allowing it to continue at its existing level of intensity, in accordance with all other provisions of applicable laws and regulations.

Mr. Barnett commented that Mr. Cosenza ignored this code and the prior determination of the ZEO (Fennell) and then simply goes to the section where you're dealing with the vacant lot.

Mr. Barnett indicated the two major issues in this case. The additional services that weren't there when the zoning was in place and the issue about the increase in the intensity of use.

Mr. Barnett discussed the issue about the type of population which was referenced in their appeal. He noted that this is not meant to be discriminatory. The change in the type of population and the difference between the patients that were seen under rehabilitation and the ones that were seen in terms of providing detox.

Mr. Barnett addressed the issue that their appeal is not timely. This is simply not true. If the determination is simply a regurgitation of prior determination then the appeal should have been taken based on the prior and not the later. He stated that Mr. Cosenza's letter indicated that they have the right to appeal within 30 days and they did so. If Cornerstone disagreed then they should have appealed. Mr. Barnett noted that their appeal is obviously timely and should be heard. He thanked the board and noted that there's also lot of folks who wish to speak.

Jodi Cross from Zarin and Steinmetz, who represent Cornerstone took the floor and expressed her rebuttal. She introduced herself and the executive officers of Cornerstone who were also present at the meeting. Tom Puzzo (?) President and CEO, Jeff Oneifather, Executive VP of Finance, Dave Bochner, Executive VP of Administration and Clinical Services, and Michael Purnell, the Executive Vice President.

Ms. Cross narrated that as a property owner, they have a large stake in what happens that night. She indicated the extensive letter they have submitted about the issues. She spoke about the issue regarding the timeliness of Mr. Barnett's appeal. This wasn't just a throw-any argument. They truly believed the case law that they submitted supported the fact that this is not a timely appeal.

Ms. Cross made a presentation using the projector screen showing side-by-side determinations of the two MCEIs. The former MCEI Fenton first made a

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determination at that time that the facility is a pre-existing nonconforming use. He determined that the facility is an Alternate Care Facility (ACF). He also determined that an increase in resident population would be permitted so long as the Cornerstone went by the Planning Board and got the proper approvals under Sec. 250-31 B-5.

Sec. 250-31 B-(5) (Alternate Care Facility) states that - Any increase in the resident population, change in type of population, and/or any expansion of the facilities shall require an application to the Planning Board for consideration of a new special use permit and shall require re-examination of the site plan by the Planning Board.

Ms. Cross continued and said that contrary to what neighbors had argued, Mr. Fenton actually did make a determination that the increase in beds is not an increase or enlargement of the pre-existing non-conforming use. You can't on one hand say that you can get an approval for it and not be saying therefore it is not permissible. They just go together. Mr. Fenton reiterated his position both in violation notices dated August and November 2021. Mr. Cosenza made a determination in his letter April 1, 2022 expressly referenced to Mr. Fenton's determination. He also concluded that the facility is pre-existing nonconforming use and an Alternate Care Facility (ACF). He concluded that the increase in resident population is permitted with the Planning Board approval. He noted that there are no new conclusions in Mr. Cosenza's letter that is not in Mr. Fenton's letter. Pointing to her presentation on the projector showing the two MCEI's letters side by side, Ms. Cross commented that these are the same arguments.

Ms. Cross commented that the case law is clear. If there is a determination that merely reiterates not word for word necessarily but also in substance and the cases use that word, it says either verbatim or in substance, the original decision would be appealable and the new one does not create a new appealable document so neighbors have repealed defending decisions.

Ms. Cross stated that they have a reason to believe (though they don't have the evidence) that the neighbors had a part in getting the notice of violation. She asked, "How did they know? "These letters were issued to us!" How did the public know?"

Ms. Cross indicated the March 17, 2022 letter/complaint from the neighbors to MCEI Rich Travis regarding the intent of Cornerstone to comply with the code. She remarked, "Clearly, they are aware of it!"

Ms. Cross stated that Cornerstone submitted an application for the increase in the number of beds to the Planning Board in November of 2021 through the direction of Mr. Fenton's letter in March of 2021. One of the neighbors who is in the opposition and one of the appellants, Katarina Maxianova was sitting on the

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Planning Board at that time, though she recused herself as she should have as a neighbor. Given the benefit of the doubt, as late as November of 2021, the neighbors were aware of Mr. Fenton's letter but they chose instead not to appeal. They waited four months while Cornerstone's application was pending before the Planning Board.

Ms. Cross explained that there is a reason why there's a 30-day statute of limitations. It gives owners such as Cornerstone closure and finality when they get their determinations. Cornerstone's application has been pending before the Planning Board for four months. She commented about the pause on Planning Board's application due to this appeal.

Ms. Cross stated that once there is a determination, you cannot just keep asking a town official to reissue a determination. When does that stop? This is the reason why there is statute of limitations. Ms. Cross stated that this is the reason why they believed that Mr. Cosenza's determination is not appealable. She opined that this alone could be grounds for dismissal. She also indicated the details of her argument in the letter submitted to the board dated May 20, 2022.

Ms. Cross addressed Mr. Barnett's argument. She stated that the crux of the issue comes down to two questions. One is about the argument about the increase in beds from 66 to 99 from 2001 to 2016 was an impermissible expansion of nonconforming use. She said, "You've heard that and for that reason the Planning Board can grant approval of the increase under Sec. 250-31 B-5.

Ms. Cross indicated the second issue about the impermissible change in the type of services and types of population. This statement is wrong. She indicated her letter to the board that explains why this statement is wrong. The representatives from Cornerstone will also explain later why these statements are wrong. She opined that the town attorney will mostly likely agree about the two really important legal issues here. First is about the mere increase in volume of business or modernization of facilities does not constitute an enlargement of a non-conforming use and the second issue is that zoning is concerned with the use of land and not the users. She commented that there's a plethora of case law out there. "You cannot control business operation!"

Ms. Cross cited Sec. 250-81 A which states:

Sec. 250-81-A Non-conforming Use shall not be enlarged or extended, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, except as provided in this article.

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Ms. Cross also discussed Sec. 250-31 B-5. She stated that ACF's increases in resident population and changes in the type of population served or expands the facilities must obtain approval from the Planning Board.

Ms. Cross underscored that this is the reason why they have a pending application before the Planning Board. She cited a case wherein the court upheld that a gas station with four pumps can double the number of pumps they have or dispensers. They have doubled the number of customers coming in and even though that increases their business, Ms. Cross stated that this is not considered an intensification or an enlargement of the use. This just a mere increase in the business. She noted that it is still a gas station, the use hasn't changed. She remarked that the very nature of Cornerstone use has not changed. Ms. Cross commented that what the zoning code cannot do is dictate that the gas station can only sell a certain octane level of fuel or that it can't sell diesel fuel. If that same gas station say has a pre-existing non-conforming accessory repair garage, the zoning cannot mandate that only American cars are served but not European cars. They cannot prohibit the gas station from upgrading or modernizing their facility to be able to service modern cars.

Ms. Cross commented about the way the servicing of the cars nowadays as compared to the early years back in the 70s given the technology and computers now. She opined that this is not an expansion of nonconforming use. This is not controlled by zoning because that's the internal business operation. That's the users and not the use. Ms. Cross said, "When we talked about the increase in intensity, this is exactly what these cases are all about." Ms. Cross believes that every cases that they cited are absolutely on point.

Ms. Cross explained the similarity between a gas station and Cornerstone. Adding dispensers in a gas station is similar to Cornerstone adding 33 beds from 2001 to 2016. It had the increase in its business capacity. There's no question about the 33 additional beds but the fundamental use as an ACF had not changed.

Ms. Cross discussed Cornerstone as an ACF with subcategory of RSF. RSF is designed to improve the functioning and daily life skills of alcohol abusers and drug dependent persons. She stated that increase in beds did not impermissibly change that use. It stayed the same and the law is clear on this.

Ms. Cross addressed the neighbor's claim that the services provided have changed. She stated that the neighbors are wrong. Cornerstone was doing detox as evident by the certification from Office of Addition Services and Support (OASAS) that specifically approved eight beds for alcohol primary program. Whether it's detox or rehab, Ms. Cross commented that this falls under the definition of improving the functioning of the daily life skills of alcohol abusers and drug dependent persons. It doesn't suddenly become a hospital just because of

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how you're treating a patient. It doesn't change the use of a garage just because you're suddenly using computers instead of wrenches. What's important here is the definition for the purpose of zoning. She noted that OASAS does regulate the use of the business operations. This is not under zoning though they have always fallen under the definition of ACF and RCF. Rhinebeck Lodge was ACF and RCF when it was purchased by Cornerstone in 1998 and it remains one today.

Ms. Cross stated that while over the years, the practices on how to treat and how to improve the functioning of alcohol abusers and drug dependent persons may have changed, it doesn't change the use itself for the purpose of zoning. It doesn't matter if you go back to 1970 and find that they did not detox back then, because it falls under the same definition.

Ms. Cross stated that the population did not change whether someone is getting detox or rehab. They are alcohol drug dependent person chemical dependency. It's the same thing, whether you get detox or rehab, Ms. Cross commented that you're still the same person.

Ms. Cross addressed the comment at the Planning Board hearing that they were treating people from criminal justice system. She underscored that Cornerstone cannot discriminate against people coming to need their services. Alcohol and drug dependent persons are entitled to services. They cannot turn them away just because of their background or because they came from criminal justice system.

Ms. Cross asked the board to refer to her letter for fuller exposition. She added that they can go before the Planning Board to get a site plan and special permit to cure an alleged violation. She stated that Cornerstone hopes that this appeal is decided quickly. They would love to get it done that night due to the pending application before the Planning Board although the law is clear that an appeal here by the neighbors does not stay the proceeding with the Planning Board. They were concerned that they were going to have undue delay and uncertainty to Cornerstone and the people they treat. She reiterated the importance of timeline. The appellant waited 30 days after Mr. Fenton issued his determination and here we are four months into the application and they decided to just step on the break.

Ms. Cross asked the board to close the public hearing at the end of that meeting and either dismiss the appeal as untimely or uphold the determination and let the Cornerstone go and serve the people of the community that needs them. She rests her case.

The board agreed to open the public hearing.

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Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

Chairman Malcarne briefed the public when expressing their comments. Be concise, succinct and considerate. The board wants to hear the public comments. If something was already mentioned and they shared the same concern then they can just briefly mention that but the board is looking for new information. He asked the public to please state their name.

David Bochner, Cornerstone Executive VP of Administration and Clinical Services spoke and stated that he held his position for 15 years though he is a social worker by heart. He's been a social worker for more than 30 years. He wanted to correct the misinformation submitted to the board about the services provided by the Cornerstone and the types of people they serve. He noted that they are continuing to provide the same services to the same type of population by their predecessor, Rhinebeck Lodge for Successful Living. He gave the history of the facility. Going back 25 years ago, at the request of NYS licensing agency, OASAS, Cornerstone was asked to take the facility from Rhinebeck Lodge. Cornerstone initially managed the facility for a year and then took ownership in June of 1998. At that time, Rhinebeck Lodge was certified by OASAS for eight detox beds and 58 rehab beds. Over OASAS certifications, Cornerstone continued to provide care for patients in need by utilizing the same 66 beds which had been licensed and used by the Rhinebeck Lodge. He noted that when Cornerstone took over the ownership, they reduced the number of detox beds to six with 60 beds dedicated to rehab. This was done with OASAS oversight and approval.

Mr. Bochner continued that Cornerstone gradually increased the number of maximum beds from 2001 to 2016 to 96 beds. That number increased to 99 beds in 2016 and this is the number of beds they have to date. He pointed out that for 16 years, the number of beds had been essentially the same each time Cornerstone increases the bed capacity from 66 to current 99.

Mr. Bochner stated that in terms of zoning, there was never any intent to ignore the requirement of the zoning code. He defers that argument with their lawyers. He commented that what is important is they have now an application before the Planning Board under the directive of Mr. Fenton. Mr. Bochner stated that today, 6 of the beds still provide withdrawal services or detox and the remaining nine days for patients undergoing rehab. The neighbors believe that Cornerstone has impermissibly expanded the type of service provided and that it was historically provided by Rhinebeck Lodge adding detox service to the mix. The neighbors insisted that Rhinebeck Lodge only provided rehab and not detox. This is not true. He stated that they assembled pre-existing detox bed as well as 58 rehab beds when they took ownership. The types of services they offered are the same. He echoed their lawyer's statement that "Alcohol primary care program is a detox

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program. For over forty years, people received treatment. The type of services offered at the facility have stayed the same. Cornerstone provided the same detox and rehabilitation services as were provided by their predecessor, Rhinebeck Lodge. He underscored that for 40 years, this facility has been a treatment facility designed to improve the daily living skills of alcohol abusers and drug dependent persons. It operated as an RSF prior to Cornerstone and continued to do so today.

Mr. Bochner commented about the neighbors' statement that the type of population they serve also changed. This is not true. If the neighbors think that Rhinebeck Lodge did not treat detox patients then they are wrong. People who need detox services and people who received rehab services are the same type of population. They are people with substance and chemical dependency issues. It doesn't matter which type of service they receive. It doesn't change the type of population they served. He reiterated what their legal counsel had said about CARF (Commission on Accreditation of Rehabilitation Services). As it states on their website, "CARF accreditation signals a service provider's commitment to continually improving services, encouraging feedback, and serving the community." He stated that for some reason, neighbors think that CARF for accreditation means that for the first time, Cornerstone is taking in a new type of population that comes from the criminal justice system. That's not what CARF accreditation means. Their program certification comes from OASAS. CARF does not oversee or dictate any of their operations. He added that they have always taken in any individual with substance or chemical dependency who needed their services. This includes working with the courts and division of parole and probation to provide treatment to individuals in the criminal justice system. Rhinebeck Lodge prohibited them from turning away people based on their criminal background. He underscored that they have not changed the population they served. They have always and will continue to treat chemically dependent individuals who want to be happy, healthy and substance free. He asked the board to look in the OASAS letter that was submitted to the board regarding the tremendous need for additional 33 beds in the interest of time and the increased demand for substance abuse treatment. To lose 33 beds in their facility would be a terrible injustice to those who were in need of rehab and detox services causing unnecessary death. The opioid and fentanyl Crises are continuing to plague our society. Per OASAS highlights during the twelve month period ending in September of 2021, there was 192% increase in fatal drug overdoses in the Dutchess County alone. He also indicated the rise in the use of cocaine and commented that the pandemic exacerbated this situation. He also stated the difficulties that health care facilities had faced in the last two years due to pandemic. Despite of financial hardship incurred during this time and losing employees, reduction of employee benefits and failure to do the necessary repairs of the facility, Mr. Bochner noted that Cornerstone still provided quality services to as many patients as possible due to the commitment and dedication of their employees. These employees risk their lives and families

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coming to work every day during the pandemic to make sure their patients were taken care of. He was privileged and humbled to be working with Cornerstone staff as they truly personified the word hero.

Mr. Bochner pleaded that the MCEI's determination be upheld and to let them proceed before the Planning Board to memorialize the increase in the number of beds and to let Cornerstone continue serving this community unimpeded as they've been doing for the last twenty five years.

Michael Purnell, Executive VP of Cornerstone of Rhinebeck took the floor and introduced himself. He indicated his forty years' experience in behavioral health and 30 years in chemical dependency. He joined the Cornerstone in 2008 and watched with great pride the dedicated staff help people that desperately need the treatment they provide. In the past 12 months, Mr. Purnell indicated that 56% of all their admissions came from the upstate area. They have 35 local people working for staff with far fewer in the evenings, overnights and the weekends. They don't have visitation to the campus so impact on local traffic is minimal. He noted that the locks on the doors are there to keep people out for the safety of their residents and not to keep the people in. They monitor their patients day and night by taking attendance at each meal and each snack and by doing bed checks every two hours overnight. There are 26 cameras both inside and outside which are constantly monitored.

Mr. Purnell noted that they cannot keep their people against their will, however, each discharging individuals leave with aftercare plan and is offered transportation. The daily schedule is very intense such as very structured group therapy and didactic presentations that occur all day. There is also free time interspersed to do homework for recreation and socialization. Chemically dependent individuals are typically unable to socialize without being under the influence. However, before a person can successfully reach and maintain recovery, they need to be able to socialize without using any substance. They have discovered that over the past two years of the pandemic lockdown, people do not do well when forced to isolate. Mr. Bochner commented that we are all social beings and we all need social support network.

Mr. Purnell highlighted that the impact on the surrounding community as a result of increase from 66 to 99 beds is imperceptible. Although they've been operating with 99 beds since 2016, Mr. Purnell noted that the maximum bed increase to 96 beds went back as far as 2006. They were essentially the same population for sixteen years. He commented that whatever impacts the neighbors are concerned about have not increased or intensified in the past or recent years. He underscored that the use remains the same as it has always been including the use when this was Rhinebeck Lodge.

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Mr. Purnell described the activities on this property. Whether there are 66 or 99 beds in the facility, there will be a few residents outside enjoying recreational activities, cars arriving and leaving the property and delivery trucks except with 99 beds, Mr. Purnell noted that they will have more capacity to treat more population who are in desperate need of the services. He expressed his understanding about the neighbor's concern about noise. He cited an instance during an overnight stay in the facility on occasion where he could hear talking, music and the sound of normal life travelling across the water from their neighbors especially during the season when leaves are off the trees. He agreed that patients can sometimes be loud and asked them to remember continually that they are in a residential community. Previous owners allowed patients to use row boats and two large wooden floats. He noted that immediately after taking ownership, Cornerstone stopped that practice and neither the staff nor the patients are allowed access in the lake. He added that he had received very few complaints in his 15 years in Cornerstone and noted that there has never been a patient that brought harm to the community. On rare occasion when they received a complaint, Mr. Purnell stated that they swiftly remedied the issue.

Mr. Purnell stated that over the past year and a half, in response to the neighbor's concern, Cornerstone fixed omnidirectional lights to ensure that there's no spill over neighboring properties. They also changed the time patients are allowed outside to minimize noise impacts in the evenings. They also changed the day of the month the generator is automatically tested so as not to have a negative impact on the neighbors' weekends or holidays. They had also reached out to the garbage company to see if garbage collection could be done more quietly. They are also proposing a tree line of evergreens in between Cornerstone property and the neighboring house as part of their planning board application for additional noise mitigation. Mr. Purnell underscored that they have always and will continue to strive to be accommodating to the neighbor's concern but also hope that the neighbors would be reasonable. Cornerstone has been a part of this community for over 40 years. He asked the board to uphold the determination on appeal and bring closure to the proceedings.

Edward Wilson, 27 Dutch Lane spoke and commented about the comments given by the Cornerstone officers. He opined that everything that they heard from the Cornerstone management is not the experience he and the neighbors had. He's been a town resident in Clinton for 20 years and been a neighbor of Cornerstone for 10 years. Unfortunately, his experience is not good. He stated that none of the neighbors dispute the value and the extremely valuable mission of the Cornerstone. He also acknowledged and support the great work that the people in the room do for their patients. He doesn't think that they should give a blank check to Cornerstone to increase the intensity of its use or impact the local community for its quality of life.

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Mr. Wilson commented that Cornerstone is not a trusted member of this community. Cornerstone has disregarded zoning laws for over 20 years. They have ignored notice of violations and claimed they were unaware of the violations in spite of many written communications over the years. They have pointed to their OASAS licenses which have changed so many times as permission to expand the capacity of the facility and the types of treatment. They even claimed that the Town has no jurisdiction over Cornerstone's operations. They have taken advantage of the ambiguity of the nonconforming use status to expand and have been happy to live outside the law. Mr. Wilson commented that Cornerstone is not a good neighbor. Their business operation placed a significant burden over the town and on its resources as evident by the frequent visits of the sheriff, the coming and going of the ambulances and the number of times the fire department are called in even though there were no emergencies. Mr. Wilson commented about the routine traffic. He also commented about the garbage on Milan Hollow Road. He opined that this garbage is not from the neighboring properties who live there full time. Those of them who live close to the facility experienced noise, light pollution at night and all the environmental impacts such as traffic, garbage, the use of local services they increased with every patient they add. This is what intensity increase means.

Mr. Wilson stated that they still haven't seen Cornerstone make any meaningful effort or representation to mitigate these impacts. He underscored that they are not seeking to shut down this operation. As they have said before the Planning Board meeting, they simply want Cornerstone to respect the zoning laws and want them to be good neighbors. In the short amount of time that the patients stay in the facility, Mr. Wilson stated that it is not tricky to manage back to the capacity they were grandfathered in. He also commented that the permit that is being sought is retroactive. He had never heard of anyone been given a retroactive permit. He asked the board that this application/appeal be entertained.

Kevin Sheffield, a recovering alcoholic spoke and said that he came to Cornerstone in 2016. He expressed good words about Cornerstone. They did a great job with their patients and helped him at a time when he can't help himself. He underscored that it is now 2022 and he's been cleaned for six years. He thanked the Cornerstone.

Kim Baker, 25 Oak Tree Road spoke and expressed her concern about the lake. She said that she doesn't hear anybody talking about the health of the lake which is declining over the years. The neighbors have been working hard and spending money to clean the lake. There's water runoff every day. There are septic issues. She indicated her concern about the 66 beds and the number of staff involved that could bring 120 people a day. If you increase 30 people then you're talking about 99 people plus the staff of maybe 60 to 70 people. She expressed her concerns about the Blanding's turtles. Central Hudson which is currently working

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on putting huge power lines along the lake will be installing an underground fence to protect the Blanding's turtles. People are not allowed to build around the lake between April and November to protect the endangered species. She asked if there was any report from the DEC or study done regarding the impact of Cornerstone. Most of the residents around the lake consist of one to four people and some are not even full-time residents. She commented that an estimate of 200 people a day will have a strong negative impact on the lake. She expressed her concern about the septic system with the increased number of people impacting the lake. The lake is becoming more and more filled with algae and lily pads. She asked the board to have an environmental study and consider the impact on the environment.

Chairman Malcarne appreciated Ms. Baker's concern but noted that the board is asked for specific content of the MCEI's letter. He thanked Ms. Baker for bringing up that concern.

Randi Sackheim, 103 Deer Hill Road, said she's been a full-time resident for 20 years now. This used to be her ex-husband's family home for 6 years. Ms. Sackheim stated that she watched Cornerstone change. There were several times when men have run by her house which is at the end of the road. She called Cornerstone and checked whether they were missing somebody. She was told that they were going to come by and check it out but they never did. She alerted her neighbors about a man running in the woods.

Ms. Sackheim discussed her ex-husband's addiction to crack. His first stop was Cornerstone. She noted that Cornerstone is not a non-profit facility. It is a for-profit facility. She indicated her respect and appreciation for the staff and acknowledged how difficult it is to work with people who are addicted to drugs and alcohol. They don't have an issue with that. She noted that they have an issue with how the facility is run. How Cornerstone ignored their requests for years. She indicated the trash and the people that they don't seem to be able to keep track of all the time. She discussed the time when her ex-husband who was at the time her husband, spent the time in Cornerstone. She had told Cornerstone about her concern that there was no barrier and her husband can just walk to their house. She commented that it was a horrible situation. Her husband would stole things from her and the neighbors to feed his habit. His friend checked him into Cornerstone and he started using a minute and a half later. He was in Cornerstone for maybe two weeks at that time and went through several kind of this facility. He is thankfully clean now for quite some time.

Ms. Sackheim indicated the non-profit facilities, churches and synagogues who helped her ex-husband. They were part of communities where they lived. They were volunteered and they made themselves available to the larger community. Cornerstone had never done that. She expressed her frustration about Cornerstone failing to address her safety concern when her ex-husband was

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under their care. Cornerstone's response was, "They count everyone a couple times a day and maybe once an hour." Ms. Sackheim remarked, "And that was it!" She is not blaming them at all and appreciated what they do but noted that Cornerstone is not a good neighbor.

Art DePasqua who lives on Deer Hill Road spoke and said that his concern is a little bit different from everyone else because he's on the planning board. He stated that the MCEI's letter dated April 1, 2022 opens up to anybody to disregard the zoning laws. It's like saying, "Oh I'm sorry I did that, let's get a permit now to correct that!" Mr. DePasqua commented that this is setting bad precedent without some sort of procedure to go through like to go back to 66 beds and reapplying to go for 99 beds. There has to be some sort of controls on what goes on because this will not be the only one that we see. It is not just Cornerstone.

Edward Jenkins, Senior Rehab Counselor and an employee of Cornerstone commented about the issue about the increase in number of beds. He said that none of you who wants to decrease the number of beds received a phone calls from mothers or families who ODs or come home and found your son or daughters dead with a spike in their arms. He noted that he was also a retired alcoholic. If not for Cornerstone, he would have been dead. Making a senseless argument about decreasing the number of beds when there's not even enough beds. Chemical dependency has been killing people for decades. We need as many beds as possible. He quoted the public concern, "It's okay that Cornerstone treat people but not in my neighborhood!" This is a problem, Mr. Jenkins said. Cornerstone is doing a great job as long as they are not doing it in my backyard.

Mr. Jenkins commented that the issue about chemical dependency needs to be addressed no matter how many people they have to service. If they have to pack that building just to save a life then it should be acceptable to the community. He thanked the board for letting him speak.

Chairman Malcarne asked to hear from a neighbor after hearing from Cornerstone people. He stated that he is trying to balance the public comments this way they don't get just all one side comments or the other.

Christian Fekete, 793 Fiddlers Bridge Road expressed his concern about the nonconforming use. If the intensity of the use is increased, he doesn't understand what the argument is. For him, nonconforming use is nonconforming use. He asked the board, "How can you even consider expanding on this without having to use "conforming to the zoning"? Unless we redo the zoning, Mr. Fekete opined that the law is clear, to limit the nonconforming use. He also commented about the earlier comments about people walking in the woods. The people in this facility are impacting the community in a negative way. He thinks that it would be

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useful if this nonconforming use was granted to attach some requirements so that Cornerstone would be obliged to provide more limits to their properties. This will behoove the Town of Clinton to define the law.

Mr. Fekete stated that if we all agree that Cornerstone is a good use then we need to find a way to prevent a type of interaction that is negative. He doesn't want to hear that his friends or neighbors are afraid for their children's safety. Mr. Fekete also talked about the instance when he saw people sitting in their cars. When he asked them what was going on, he received no response. He stated that he's not happy to see these people hanging around on the road

Jennifer Schofield spoke and said that she started working in Cornerstone in 2009 as Clinical Director and became Vice President of Clinical Services late last year. She's a licensed clinical social worker and worked in the field of addiction since 1997. She thanked the Cornerstone people for the support of the work that they do at Cornerstone and their compassion towards those who are sick and suffering. She agreed that Cornerstone simply must follow the rules. She underscored that is exactly what they're doing as evident by the pending application before the Planning Board. She stated that she wants to discuss community. Born and raised in Long Island and lived in the city for many, many years, she eventually moved to Hudson Valley in 1996 and settled to raise a family. She addressed the earlier comment about being a good neighbor. Having lived and worked in many places, Ms. Schofield opined that being a good neighbor depends on where you live. In the city, she never learned her neighbors' name after living in the same building for 10 years. In Hudson Valley, it's the contrast. She indicated an instance during a storm when the big tree came down the road and the neighbors including her husband immediately went outside with a chainsaw to cut the tree. It's a different neighbor experience that reminded her of a small town. Living and working in Rhinebeck had made her feel like part of the community for the first time since living in the city. In Cornerstone, they have always tried to be good neighbors. They strived to be as quiet and unobtrusive as possible. No bright lights outside, no noise allowed at night. They transport their patients to and from the facility in an unmarked SUV regular vehicles. They don't have big ugly barbed wire fences or loud alarms. The buildings and grounds are kept tidy. As per the comments made earlier, Ms. Schofield stated that it seems that the neighbors has a different view of what a good neighbor is. She expressed her desire to fix and address the issue about being a good neighbor. She is a problem solver and she hope that together they will be able to improve community relations moving forward. She summoned everyone, anybody to talk to her and work together to find solution to the neighbors' concerns. She was deeply troubled hearing the accusations about Cornerstone mistreating patients, that they are providing subpar addiction treatment, that they are for profit money making industry. After working at Cornerstone for a long time. Ms. Schofield underscored that the treatment they provide is of the highest caliber. The State, County and Federal regulations guide

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their policy and procedures. They are strict with themselves and as a group, they hold themselves to extremely high standards. They never gave up on their patients. They were there for them whenever they were needed. They work diligently to arrange aftercare program for everyone who leaves the program. The patients they saved give them highest compliment and referral to family and friends or someone in need of the service. She expressed her desire to fix and address the issue about being a good neighbor. She added that their patients who were healed and sobered call them on their sobered anniversaries and even come back to visit them. Nobody enters field of addiction treatment to get rich. Human service jobs are not high paying jobs in dollars and cents. They get paid with the satisfaction of helping people rebuild their lives. They create and spread mental and emotional, physical and spiritual health. They save lives. Ms. Schofield pleaded the board to consider the appeal with a thought that if the number of beds is reduced, then that means that in any given day or night, there will be fewer people in treatment. She asked, "How can we as a community of neighbors possibly justify helping fewer people in need when we have the resources and the desire to help more."

Chairman Malcarne thanked Ms. Schofield for her comments and for encouraging anyone to discuss and resolve any concerns. He asked the public to take advantage of that opportunity as much as possible regardless of the situation. He gave a general comment that "We're in this neighborhood together." He also reminded the public about the specific interpretation application on hand. This is about the increase in the number of beds from 66 to 99 beds and the specific decision made by the Zoning Officer/MCEI. He noted that none of this decision is whether this institution will be here. He encouraged working out the concerns.

Katarina Maxianova, 79 Deer Hill Road, said that they've been living there 200 feet of the facility for years. Cornerstone management stated that the neighbors don't fully understand what they do but Cornerstone never reached out to anyone to tell them what they do. Their operation seems to be cloaked with secrecy. They have tried reaching out to Cornerstone. They learned Cornerstone based on what they see and what they read. She discussed the scenario at the facility that is highly visible from her yard. They see the patients face and hear their conversations daily. They played sports and having fun but there seems to have frequent fights. They see and hear ambulance, fire trucks and sheriff's car multiple times a week at any time of the day. The needles and pills on bottles with patients' name laying on Milan Hollow Road mere steps away from their children's school bus stop. They ran into patients who have left or got kicked out sitting on the side of Milan Hollow Road. They were alerted about registered child sex offenders including child rapist staying at the facility. Ms. Maxianova underscored that they have tried to reach out to the management multiple times. The only meaningful meeting that they have with the Cornerstone management was on December 2020. During that conversation, they have learned that 60

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patients were from NY City and the rest were from Upstate New York. Ms. Maxianova stated that they also learned from that meeting that Cornerstone see themselves as a short term program. Their detox program is 5 days and the rehabilitation program is 28 days. The duration depends on what the patients want and need. It also depend on what the insurance will pay. They have learned that these patients were extensively with parole and probation. Ms. Maxianova stated that per Cornerstone management own words, they work mostly through the drug courts. It's for people who have alternatives to incarceration program like Midtown Community Court and Brooklyn Treatment Court. She noted that this is the quote from the conversation they had with Cornerstone management.

Ms. Maxianova explained that they have asked about the child sex offenders patients not to discriminate but to understand the procedures and get peace of mind given the close proximity of the facility. She expressed her strong concern and remarked, "This is literally 30 seconds walk from the facility to her house. There are no barriers nor protection!"

Ms. Maxianova stated that the response from Cornerstone management did not help them. Cornerstone management said that they do not know if someone is a sex offender. They don't need to use the state database to check about a sex offender. They only stayed in the facility for a short period of time. Ms. Maxianova commented that Cornerstone needs to check the state database to know the status of their patients and employees. They chose not to do it.

Ms. Maxianova stated that Cornerstone had told her that they are not an Alternate Care Facility. They are and have always been a hospital. She expressed her disappointment that Cornerstone told them that they have no immediate plans of expanding when in fact they were working in the background with the ZEO about their plans of expanding the facility. They have lost their trust in Cornerstone and decided not to engage in any communications directly with them. She indicated their doubts about Cornerstone's current intentions. Cornerstone is trying to rush this through and hoping to get a resolution today or next week. She indicated the potential buyer and change of ownership pending for Cornerstone which is on file with OASAS and is public information. This has been approved by the OASAS and ownership will be transferred to an individual as soon as this gets cleared. Ms. Maxianova commented that this is not an attempt to continue to work with the community. This is an attempt to clear something to get a sale. Just like in 1998 when Rhinebeck Lodge got the status of tranquil facility to get a clearance to sell to Cornerstone. Ms. Maxianova stated that she is not going to mention the name of the individual but is happy to share it. It's public information. It's on the OASAS website.

Jodi Cross, Cornerstone legal counsel was back on the floor and addressed the public comments. She stated for the record that they vehemently disagreed

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about a lot of things that were said earlier. They are false and irrelevant to the process. They are not going to go statement by statement to refute everything but didn't want to let it stand that they accept everything that's been said. She appreciated and thinks that the board understands its jurisdiction and that much of the comments were irrelevant to the zoning and this proceeding.

Ms. Cross commented on the earlier comment including the comment from the Planning Board chairman that it's going to set bad precedence to allow retroactive approvals. Ms. Cross stated that it happens all the time. Talking about the intent of Cornerstone, Ms. Cross said that Cornerstone did not intend to break the law or violate the zoning. She noted that they do not need to go before the Planning Board for approval but they are doing so for reservation of rights as a good citizen and as a good neighbor.

Ms. Cross opined that whether they disagree or not, retroactive approvals happen all the time. She cited an instance about the property owner who built the deck in the setback and came before the board after to legalize the deck. Nobody asked them to take the deck down first before getting approval. Ms. Cross commented that what they're doing is unique. They are willing to talk to the community to discuss the issues and concerns.

Tim Dumbleton, a resident, and architect in NYS stated that he's been involved in a dozen of rezonings. He indicated his work in rezonings in NYC, Los Angeles, Miami and some of the hardest places to do rezonings. He is also a developer. He opined that it is clear that this is an increase in non-conformity. The analysis that their lawyer gave about the gas station is completely inapplicable. He gave his opinion about the gas pumps and as an architect who has done lots of rezoning work, Mr. Dumbleton commented that this will be an easy decision.

Kyle Barnett, the neighbor's legal counsel was back on the floor and stated that there might be a little confusion about the earlier comments. It doesn't matter what Rhinebeck Lodge was doing in 1994. It matters what Rhinebeck Lodge was doing when they were grandfathered. To simply get up here and say that Rhinebeck Lodge was considered a primary alcohol facility when in fact Cornerstone got their certification in 1994. Mr. Barnett commented that as soon as Cornerstone engaged in the services of providing detox to their patients then this is an illegal expansion of the nonconforming use. He doesn't know why they're putting an emphasis on what happens in the mid-90s when what matter is what they were doing before the zoning went into effect. He gave the definition of Detoxification under Title 14 of New York Code, Rules and Regulations as stated below:

816.4 Definitions. (a) "Detoxification" or "detox" means a medical withdrawal and stabilization regimen under the supervision of a physician to systematically reduce the amount of an addictive substance in a patient's body, provide

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reasonable control of active withdrawal symptoms and/or avert a life threatening medical crisis related to the addictive substance.

Mr. Barnett stated that this does not exist in the definition of ACF or RSF. The term medical is defined in the town code as "A building designed or used for the diagnosis and treatment of human or animal patients, which does not include overnight care facilities.

Sec. 250-105 of Town of Clinton Zoning Law defines Hospital as - An establishment for temporary occupation, including overnight admission, of the sick or injured for the purpose of medical diagnosis and treatment. Such an establishment may be either public or private, and shall be limited to the treatment or care of humans. See also "clinic," "nursing or convalescent home," and "alternate care facility."

Mr. Barnett stated that the code clearly envision what types of these activities are. He discussed the intensity of the use. The law is clear in keeping a sound public policy in extinguishing all nonconforming uses of the property is to enforce municipal ordinances which restricts an owner's ability to expand or intensify a prior nonconforming use. He commented that the cases cited by Cornerstone do not deal with a situation where a town code prohibits the increase in intensity. He thanked the board.

The board agreed to take a break at 9:37 pm and resumed the session at 9:45 p.m.

Chairman Malcarne reminded everyone that the board is providing this opportunity for the public to speak and share their experiences. He solicited more comments from the public and to focus on new information.

Ms. Maxianova took the floor and responded to the earlier comments about inaccuracies and misinformation. She underscored that anything that she had said on her comments earlier were based on her conversation with Cornerstone management via zoom which is recorded and available for view. She stated that she is happy to share it with the board.

Ms. Maxianova discussed rehabilitation as defined on ACF and detox. We know that detox is a short term process, in this case, five days per Cornerstone management. She stated that ACF is defined in our code as residential use. Residential is defined as used for dwelling and dwelling is defined as follows:

Sec. 250-105- Dwelling is "A house or other building designed or used primarily for human habitation. The word "dwelling" shall not include tourist homes, mobile homes, camping vehicles, motels, hotels or other structures designed for transient or temporary residence."

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Ms. Maxianova also read the definition of Transient per Sec. 250-105 which states "Used herein to mean any occupancy of duration less than or equal to 14 days in a calendar year." She added that temporary is also defined in the code as a period of no more than 30 calendar days.

Ms. Maxianova opined that detox is a transient use. You cannot come in and stay for detox services for seven days and be considered ACF which is a residential use. Residential use means over 30 days.

Mr. Mustello asked Ms. Maxianova to expand on her comments about her zoom meeting with the Cornerstone management. He asked, "Was that a meeting with a local representative of Cornerstone?" Ms. Maxianova responded, "Yes, that was a meeting with Mr. Bochner and Mr. Purnell."

Mr. Mustello verified Ms. Maxianova's early comments that during her conversation with Cornerstone's management, Cornerstone stated that they are hospital and not an ACF. Ms. Maxianova responded, "Yes".

David Dieter Schoellberger, 107 Deer Hill Road took the floor and said that he's been a town resident for five years. A lot of comments and concerns were heard and he doesn't want to repeat anything. He thanked and appreciated the Cornerstone employees for the level of work they do. He commented that he doesn't know if the employees are aware of what the management is doing (sale of the property). He asked the board to look into the sale as well. If this gets approved tomorrow and Cornerstone is sold, they will be dealing with new property owners. This property could then be different tomorrow depending on the new owners. Mr. Schoellberger commented that he doesn't know if everyone is aware about the sale of the property.

Christian Fekete asked if the nonconforming use of the property continues with the next property owners. Chairman Malcarne responded that if there is pre-existing nonconforming use of the property and it changes hands, then it's okay to continue the pre-existing nonconforming use. He noted that this was already established as pre-existing and nonconforming use.

Jodi Cross was back on the floor and remarked that the sale of the property or whatever is going on is completely irrelevant. She said that the neighbors do not understand the details of that and they are not going to go into these details. She responded to earlier comments about residential use. She stated that residential uses do not always include homes. She represents a lot of community residences like long term summer for eating disorder where the residents were there for short period of time. She thinks that this board knew that residential uses do not always mean houses.

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Ms. Cross addressed the comment about the zoom meeting. She noted that she wasn't aware of that video call nor what was said at that meeting. Her clients are not lawyers nor zoning officers. If her clients had called the facility a hospital, (which she doesn't know if they did), it doesn't mean it's a legal admission based upon the zoning code and legal interpretation. She deferred to her clients to speak about the facts of detox. They will explain why detox is not a hospital medical use.

David Bochner took the floor and explained that OASAS sets and mandates the criteria for admission to any program in the state. There are levels of detox. The first one is called Medically Managed Detox. This is done in an acute care hospital called Article 28 Hospital like Northern Dutchess Hospital. The second level of detox is called Medically Supervised Withdrawal Services. He underscored that this is what Cornerstone provides. There are two levels of withdrawal services. One is inpatient which is Cornerstone and the other level is outpatient which is not them. They evaluate a patient who comes in seeking treatment and if the patient does not pass the criteria of the program then this patient gets sent to a higher level of care which is a hospital. They transport them to a local hospital where they can get the services they require.

Mr. Bochner accentuated that they are not a hospital and they are not an acute care facility. They are a sub-acute care facility. OASAS wouldn't license them to perform medically supervised withdrawal service if it needs to be done in a "hospital".

Mr. Bochner said that they live and deal with this every single day. It's what they do. There are 816 regulations as part of the OASAS code. He underscored the important distinction of the levels of detox. He added that some detox is done on an outpatient basis where someone goes in for the day and goes back home. He reiterated that detox has all different kinds of levels and not just in the hospital.

Chairman Malcarne asked questions and comments from the board. He noted that this meeting is about gathering information.

Russ Tompkins commented on the information received from Ms. Cross. He said that it should state except as disallowed per Sec. 250-80 (General Provision). It's missing a very important clause. He opined that Sec. 250-80 disallowed some things. He also commented about the statement that Cornerstone was not aware of the violation until they received the violation letter from Mr. Fenton. He said, "OASAS letter states that you should comply with local authorities". Mr. Tompkins also indicated the determination made by Mr. Fennell in 2005 stating the Town of Clinton Zoning law does not permit an increase in the number of patients. A letter from Mr. Fenton basically says the same thing.

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Mr. Mustello asked Mr. Purnell regarding the staffing in relates to the increase. Going from 66 to 99 beds is almost 50% increase in residence. He asked, "How is the staffing relates to that increase?"

Mr. Purnell responded that they have an average staff of 35 a day not of whom are on the property every day. Some of them work from home. The 35 staff are spread over three shifts.

Mr. Mustello asked, "Was the 35 consistent prior to the increase?" Mr. Purnell responded, "No." They did not have to double the staff to make the accommodation from 66 to 99 beds. There is certain amount of staff in each department so it does not increase in direct proportion to the number residents.

Mr. Mustello explained his query. He was troubled by the earlier comment that the increase in residents was imperceptible to the neighbors. He said that common sense that increase in population can impact the number of cars and garbage pick-up as per comments earlier.

Mr. Purnell understands the concerns and said they can always get a bigger dumpster. He said that he cannot argue about the logic that more people means more garbage.

Mr. Calogero indicated Section 250-81 (A-2) of the Zoning Law which states "Where no building is involved the non-conforming use of the land may not be extended to occupy a greater area of land, or to include more intensive use of the same area of land, than occupied on the effective date of this chapter."

Mr. Calogero asked Mr. Burnett's view about the last statement of the section to maybe convince the board that although there's more people on the property, more beds, more meals being served, that there is somehow, not a more intensive use going on in here.

Mr. Barnett responded that he believes that Sec. 250-81 primarily deals when there is an increase in the intensity of an unoccupied or vacant land. In terms of this situation, Mr. Barnett opined that the prohibition on the code is found on the section right above that which is Sec. 250-80.

Sec. 250-80- B-2 states "The intent of this article is to limit, by not increasing, nonconforming uses and to eliminate such uses as speedily as possible, but at the same time to alleviate economic hardship to an existing nonconforming use by allowing it to continue at its existing level of intensity, in accordance with all other provisions of applicable laws and regulations".

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Mr. Barnett opined that the prohibition against increasing the intensity deals with when you're taking a nonconforming use and moving it out onto other parts of the parcel that wasn't being used before which is also prohibited.

Mr. Calogero stated that didn't answer his question. He explained that he is looking for a way to judge whether the changes that have taken place from 66 to 99 beds, he asked, "How do you justify or evaluate whether the use of the same area of land on which they haven't added more land and they have the same area of land. How do we judge that the use is more intensive? Mr. Calogero stated that he would assume that Mr. Barnett would conclude that it is more intensive and not similar intensive. Mr. Barnett agreed.

Mr. Barnett stated that what more intense is the 50% increase in the number of people that is being served. He commented that this is not even a little more intense but rather significantly intense.

Mr. Barnett stated that he doesn't think that there is a disagreement between them and the Cornerstone that the 50% increase is a more intense use. The disagreement is where Cornerstone believes that because of all the cases they cited that the increase in population is permitted. He opined that this is not about whether the use is more intense. The argument is about whether or not the code permits it. This is really what needs to be judged as opposed to what is more intense. He added they can also make the same argument about the addition of services. It obviously creates more of an intense use.

Mr. Tompkins asked Mr. Barnett about his comment that there is a stipulation in the zoning code that has something to do with the increase in population and it would be a problem if it was not in the zoning code. Mr. Barnett responded that stipulation is found on Sec. 250-80-B and underscored the statement that read "allows it to continue at its existing level of intensity."

Mr. Barnett stated that he's done a lot of nonconforming cases in other towns. There are towns that simply prohibit the enlargement or extension of nonconforming use. If that was the case, he thinks that there is a legitimate argument that an increase in intensity isn't necessarily a violation of that however, Town of Clinton code clearly states that it is a violation to increase an intensity of nonconforming use. He noted that there is a case in this department right now that gives the Town the authority by code to regulate the intensity. He remarked, "The Town can and do so!" It needs to be followed.

Ms. Cross refuted that this is an intensification of the use. Adding more people or increase in the number of people doesn't mean intensifying the use. She disagreed that this is an obvious intensification without empirical evidence or understanding of what that means. The case law states that it has to be

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interpreted in the landowners' favor so if there is any ambiguity, Ms. Cross opined that it should be in their favor.

Ms. Cross continued and said that she doesn't know how you can demonstrate that 30 people create an intensification of the use. It's the use and not just the business. She remarked, "There's a big difference there!"

Ms. Cross also disagreed with Mr. Barnett's opinion about Sec. 250-80 B-2 that prohibition is the legislative intent and policy statement or the intent of this code to put into effect with the section that says "thou shall not enlarge your nonconforming use."

Mr. Barnett noted that the previous attorney for Cornerstone, Mr. Replansky put in his October 2005 letter that this is a more intense use. Mr. Barnett indicated that he agreed with Mr. Replansky's view. He doesn't know how the board can come up with a reasonable solution that it is not.

Ms. Dolan asked Mr. Purnell what is the current use of the building that was put over an old pool. Mr. Purnell indicated the history of the pool. This hasn't been a pool since Cornerstone took over. They covered the hole and it is now a flat slab. They did not build another building. He noted that the current use of this area is strictly storage. There's no other use they can make of it right now. Patients are not allowed in this area.

Mr. Mustello stated that there is a reference in the submission about a 3,000-square-foot storage building. He asked if this is single story building. Mr. Purnell responded that this is a two story building. There's no floor in it. It's just open and the paperwork refers to it as pole barn.

The board discussed whether to leave the public hearing open. Chairman Malcarne thinks that the board has enough materials to give a decision. It's a matter of sorting out and going through all the submissions. He asked the public for any more comments before they close the public hearing.

Ms. Cross stated that the neighbor's attorney had recently submitted a new letter to the board. She hasn't seen this letter and asked the board if she can respond to these comments.

After a lengthy discussion, the board agreed to give Ms. Cross until June 2, 2022 to submit her final comments and give Mr. Barnett June 9, 2022 for his rebuttal.

Chairman Malcarne read the two correspondences received from the neighboring property owners. Sarah Ivins, 93 Deer Hill Road and Eric Bunge, 170 Silver Lake Road both expressing their strong opposition and concerns about the retroactive approval for the quote "illegal" expansion of the nonconforming use.

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Chairman Malcarne solicited final comments from the public.

Sandra Oliviera, spoke and asked if anybody ever think about human beings and noted that these people are actually dying. She kept hearing comments about concerns in getting permission to increase the number of beds, building another bathroom, expanding a home, pool, etc, She said “Everyone talks about the epidemic all over the world but yet we compare expanding 30 beds to help people who are dying to expanding a bathroom.” This is inhumane. She’s been working in this field for a very long time and never sits in the room like this where communities actually compare her clients that she helps every day to buildings and bathrooms. These patients are not easy to deal with, she admitted. They have been through a lot but she never looked at them as buildings or new bedrooms.

Ms. Oliviera pleaded that they are asking this approval to help more people. She addressed the public and said, “For the people in the room who don’t want them, she prayed that their family members will not be going to need them in the future because they will certainly not turn them away.” It troubled her that she was in this room full of people who are comparing beds to human beings.

After a lengthy discussion, the board agreed that 62-days will take place after June 9, the last day to get a comment from Mr. Barnett.

The board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 5-0.

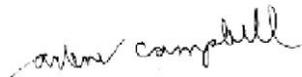
Chairman Malcarne thanked everyone for the orderliness of the meeting and expressed the board’s understanding about the feelings of both sides of the parties.

APPROVAL OF MINUTES:

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 10:38 pm, seconded by Mr. Calogero, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary