

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
March 23, 2023**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Ron Mustello
Russel Tompkins
Frank McMahan

MEMBERS ABSENT

ALSO PRESENT

Arlene Campbell, Secretary

Eliot Werner, Liaison Officer
Jeff Newman, MCEI

Chairman Malcarne called the meeting to order at 7:34 pm.

Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves.

AREA VARIANCE:

None

INTERPRETATION:

None

ADMINISTRATIVE ITEMS:

- Consideration of Resolution approving “So Ordered Stipulation of Settlement” regarding Article 78 proceeding (Index No. 66048/2022) commenced by Medical Arts Sanitarium, Inc. D/B/A Cornerstone of Rhinebeck against Town of Clinton Zoning Board of Appeals, et. al..

Shane Egan, the Town Attorney was also present for the discussion of the above matter.

Mr. Canham gave a brief introduction about the resolution. Cornerstone is basically withdrawing their Article 78. This is a resolution that would authorize the Town Attorney to execute the Stipulation of Settlement which would resolve and

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discontinue the Article 78 Proceeding. It seems that this is a joint motion between the Town Board and the Zoning Board of Appeals.

Mr. Egan stated that the Town Board passed the local law in order to enforce this decision. The ZBA doesn't have an enforcement mechanism. The ZBA had interpreted a different law since the law changed.

Mr. Canham asked if this motion eliminates the board's previous decision. Mr. Egan responded that this codified the number of beds. There is no wiggle room for them to exceed the number of beds.

Mr. Canham commented that this seems like a formality for the board. Mr. Egan disagreed. He doesn't think it's a formality. This is a discontinuance of a legal action. He added that this actually benefits the ZBA since there is an acknowledgement that the number of beds is 68. The lawsuit is going away. It's being resolved and the applicant can go before the Planning Board.

Mr. Egan noted that this stipulation will discontinue the action without prejudice only in the sense that they can bring an action back if the neighboring property owners would have brought a lawsuit in the next four months to invalidate the Town Board action. He noted that once four months are up, they cannot file a lawsuit. It's with prejudice! There is a Local Law that was passed and they can't file a lawsuit again.

Ms. Dolan asked the town attorney to repeat his last sentence.

Mr. Egan reiterated that the discontinuance of the action is with prejudice after four months. There is a statute of limitation. Right now, the discontinuance of action is without prejudice since they can bring it back if the neighboring property owners commence a lawsuit within the next four months, but after four months, they can't. This lawsuit goes away completely after four months. They want to see what the neighboring properties are going to do in reference to the Local Law that was passed.

Ms. Dolan stated that at the last Town Board meeting, the Cornerstone attorney stated that they wouldn't ask for more than 99 beds. They noted that they won't go past that. She commented that the Planning Board should only be granting 99 beds then.

Mr. Egan commented that the Cornerstone application states 99 beds. They can only do an additional couple of beds if they want to increase that number. He noted that they can only go up to 102 beds.

Mr. Werner said that they can also get a variance to increase that number. Mr. Egan noted that the increase in number of beds is a use variance.

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Mr. Newman indicated the state licensing of 99 beds. The capacity depends on the size of the building.

Mr. Egan agreed and noted that Cornerstone is not proposing to add any buildings. The footprint of the building is not changing.

Ms. Dolan asked if the state limits the number of detox beds as opposed to the entire population. Mr. Egan thinks that there are specific beds dedicated to detox.

Ms. Dolan noted that her comments have nothing to do with what they do over there. Detox is a different process. Traditionally, detox is separated from the general population as far as the facilities that she knows. She commented that this matter will be on the Planning Board's plate now.

Mr. Newman stated that the number of population is based on the square footage of the building and not by the type of treatment. He opined that the 99 beds include the number of detox and the general population.

Mr. Egan noted that the maximum number of beds they can have is only 102.

Ms. Dolan expressed her concern about the number of beds in relation to the detox and general population. Mr. Egan opined that OASAS has the purview of what type of services they can provide in the facility. It's a state regulated facility.

Ms. Dolan remarked that there is a great deal on the Planning Board plate now. She commented about the capacity of the facility. The Cornerstone's lawyer stated 99 beds. Mr. Egan agreed and noted that this number (99) is consistent with their application of 99 beds.

Ms. Dolan commented about the security. She quoted Cornerstone's comment during the public hearing stating – "Their population is able to leave by their own free will. -- That they cannot keep the patients there!" Ms. Dolan remarked, "It shouldn't mean that the patients can wander everywhere". It should mean they should be restricted to Cornerstone's property and if exiting should be via Cornerstone's driveway/property to the road, not crossing other properties. She noted that she wants to present these thoughts as points of consideration.

Ms. Dolan discussed the use of the Town's infrastructure. East Clinton FD sent a letter stating they can no longer assist with the needs of Cornerstone. That is a bigger burden to the West Clinton Fire District. Ms. Dolan wonders if Cornerstone will agree to use commercial emergency vehicles instead of using the town's infrastructure.

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Ms. Dolan expressed concerns about the impact on traffic, environmental assessment (thoroughness), tax assessment and noise. She commented that it might be good if the Planning Board has some advisors in addressing these concerns.

Chairman Malcarne commented that these are good points.

Ms. Dolan stated that she recalls hearing a Town Board meeting comment that the Planning Board will address the tax assessment.

Ms. Campbell stated that the tax assessment is the purview of the town assessor. The Planning Board does not address the tax assessment. The town attorney concurred with Ms. Campbell.

Ms. Dolan expressed her concern about the low assessment of the Cornerstone's property. This was sold recently for \$35M and it is being assessed for \$1.4M. She remarked, "This should be reassessed significantly. She added that at the Town Board meeting it was mentioned that the current assessor expressed concern about being comfortable assessing a large commercial property. At that Town Board meeting it was stated that they might bring someone to help with the assessment if Ms. Stegner so desired.

The town attorney concurred that it was mentioned at the Town Board Meeting that Cornerstone is underassessed.

Ms. Campbell asked Ms. Dolan who made the suggestion that the Planning Board will make this part of their evaluation. Ms. Dolan responded, that to the best of her recollection, "It was Supervisor Mike Whitton."

Mr. Egan commented that he doesn't recall that. Grievance Day is coming up and the assessment is under the Assessor's purview.

Mr. Egan commented that the town assessor, Ms. Stegner, is very good at what she does. If she thinks that she needs an expert to help her assess the Cornerstone, then she will let the Town Board know.

The panel had a lengthy discussion about Cornerstone's current assessment. Mr. Egan commented that the town doesn't have the details of the record of sale yet.

The panel discussed the verbiage of the resolution.

Ms. Dolan asked about the four-month threshold. She asked, "Does it go away after four months?" Mr. Egan responded, "Yes."

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Ms. Dolan asked, “So, if for instance, the Planning Board grants them a number of 89, does it mean—Cornerstone can sue the town again? Can they challenge the Planning Board’s decision?”

Mr. Calogero responded, “Yes, or they can go before the Zoning Board of Appeals to get the variance.”

Mr. Egan responded that there’s always a reason to sue somebody. If they think they have a basis to start an Article 78, then they will do it but note that there is also a statute of limitation. He accentuated that in this case, it won’t bring this case back.

Mr. Canham asked the town attorney, “What does this stipulation do to the ZBA’s resolution in regards to August 31, 2021’s decision that they were in violation? He read the verbiage stating...” Municipal Respondents will continue to hold enforcement of the August 31, 2021 Violation Notice in abeyance until such time as the Planning Board proceedings in connection with Petitioner’s application are concluded.

Mr. Canham asked, “Will the violation disappear?”

Mr. Egan responded, “Yes.” They’re no longer in violation since they met the requirements of the new law. The ZBA decision was based on the previous law.

Mr. Werner commented that the Town Board’s decision supersedes. Mr. Egan affirmed.

Mr. Canham stated that once the Cornerstone gets their special permit then they are no longer in violation and ZBA’s decision becomes moot.

Ms. Dolan commented, “So that means the ZBA’s decision was superseded.”

Mr. McMahon asked if the neighbor’s concerns are going to be addressed in this resolution. Mr. Egan responded that these concerns will be addressed during the special permit process.

Mr. Calogero commented that he likes the verbiage of the resolution. He felt that the town went around the ZBA’s decision though he feels the board did consider the neighbor’s concern.

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Chairman Malcarne agreed about the thoughtful process that this matter went through. He expressed good comments about the Town Board's decision to make everything go away. He indicated no objection to the resolution.

After all the discussions were made, the board passed a resolution, to wit:

At a regular meeting of the Town of Clinton Zoning Board of Appeals duly held at the Masonic Hall of the Town of Clinton, 1215 Centre Road Rhinebeck NY 12572 on the 23rd of March 2023.

Upon the calling of the roll by the Zoning Board Clerk the following members were:

Present: Chairman Joseph Malcarne, Charlie Canham, John Calogero, Norma Dolan, and Frank
McMahon

Absent: Ronald Mustello
Russell Tompkins

The following resolution was offered for adoption by Charlie Canham which resolution was seconded by Frank McMahon.

RESOLUTION APPROVING SO ORDERED STIPULATION OF SETTLEMENT WITH MEDICAL ARTS SANITARIUM, INC. D/B/A CORNERSTONE OF RHINEBECK (INDEX. NO. 66048/2022).

WHEREAS, Medical Arts Sanitarium, Inc. d/b/a Cornerstone of Rhinebeck ("Cornerstone") commenced a special proceeding by petition in Westchester County Supreme Court (the "Court") bearing Index. No. 66048/2022 (the "Article 78 Proceeding") against the Town of Clinton (the "Town Board") and the Town of Clinton Zoning Board of Appeals (the "ZBA");

WHEREAS, Cornerstone commenced the Article 78 Proceeding seeking to vacate, annul and reverse a ZBA decision dated August 31, 2022 which determined that Cornerstone is in violation of certain provisions of Chapter 250 (Zoning) the Town of Clinton Town Code (the "ZBA Decision");

WHEREAS, by Resolution adopted at the October 11, 2022 Town Board meeting the Town Board authorized the attorney for the Town Board to enter into a stipulation which would hold in abeyance the time to respond to Cornerstone in the Article 78 Proceeding and stay the commencement of any enforcement of the ZBA Decision during the abeyance period;

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WHEREAS, on February 14, 2023 the Town Board, after months of consideration and two public hearings, adopted Local Law No. 1 of 2023 which amended Chapter 250 of the Town of Clinton Town Code (Zoning) in regard to the regulation of alternate care facilities;

WHEREAS, Local Law No. 1. of 2023 permits a nonconforming alternative care facility to apply to the Planning Board for Site Plan and Special Use Permit approval to expand its resident population to an amount not exceeding fifty percent (50%) of the capacity that existed when the alternate care facility became nonconforming;

WHEREAS, by Resolution adopted at the March 21, 2023 Town Board meeting the Town Board voted to authorize the attorney for the Town Board execute a So Ordered Stipulation of Settlement which would resolve and discontinuance the Article 78 Proceeding on the terms and conditions set forth in the So Ordered Stipulation of Settlement; and

WHEREAS, the ZBA now desires to approve that same So Ordered Stipulation of Settlement, which is annexed hereto and made a part hereof, and authorize the ZBA's attorney to execute the So Ordered Stipulation on the ZBA's behalf.

NOW, THEREFORE, BE IT RESOLVED, that the Town of Clinton Zoning Board of Appeals hereby authorizes, directs and empowers the attorney for the Town of Clinton Zoning Board of Appeals, Shane J. Egan, Esq., to execute the So Ordered Stipulation of Settlement and take any actions necessary to effectuate the terms of the So Ordered Stipulation of Settlement.

The vote having been taken upon such resolution the result was as follows:

Joseph Malcarne	<u>Aye</u>	
Charles Canham	<u>Aye</u>	
John Calogero	<u>Aye</u>	
Ronald Mustello		<u>Absent</u>
Norma Dolan	<u>Aye</u>	
Russell Tompkins		<u>Absent</u>
Frank McMahon	<u>Aye</u>	

There being a majority of the Town of Clinton Zoning Board of Appeals voting to approve the resolution, the resolution was declared by the Chairman to have been adopted.

DATED: Town of Clinton, New York
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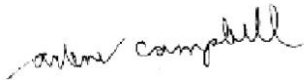
APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the minutes of January 25, 2023 as amended, seconded by Mr. Calogero, All Aye, Motion carried 5-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 8:15 pm, seconded by Mr. Canham, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk