

EXHIBIT 8



Zoning Department
TOWN OF CLINTON
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Michael Cosenza, Municipal Code Enforcement Inspector

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April 1, 2022

Via Certified Mail and Email: KBarnett@VanDeWaterLaw.com

Kyle W. Barnett, Esq.
Van DeWater and Van DeWater, LLP
85 Civic Center Plaza
Poughkeepsie, New York 12601

**RE: Medical Arts Sanitarium, Inc. d/b/a Cornerstone of Rhinebeck (“Cornerstone”)
73-93 Serenity Hill Road, Clinton New York 12572
Parcel Identification No.: 6469-00-531763**

Dear Mr. Barnett:

I was appointed by the Town of Clinton Town Board to serve as Municipal Code Enforcement Inspector (“MCEI”) on March 28, 2022. I am in receipt of your letter dated March 17, 2022 regarding alleged violations of Chapter 250 (Zoning) of the Town of Clinton Town Code (the “Town Code”) at the above referenced property (the “Cornerstone Property”). I have reviewed our office’s file and the status of the Cornerstone Property.

History

John J. Fenton, my predecessor, determined that Cornerstone is an Alternate Care Facility (“ACF”) under Section 250-31 of the Town Code by letter dated March 6, 2021. Subsequent letters issued by Mr. Fenton dated August 31, 2021 and November 10, 2021 state that Cornerstone is in violation of Section 250-31(B)(5) of the Town Code for failing to obtain approval from the Planning Board for a bed capacity increase from 66 to 99 and directed Cornerstone to apply to the Planning Board for the necessary approvals. Section 250-31(B)(5) of the Town Code provides as follows:

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

As directed by Mr. Fenton, Cornerstone submitted such an application to the Planning Board on or about November 23, 2021 which is currently pending.

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Letter to Kyle Barnett, Esq.
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Discussion

Section 250-105 of the Town Code defines an ACF as “[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.” The Town Code then lists specific types or subcategories of supervised facilities which constitute ACFs. These subcategories include “Halfway House”, “Housing for the Disabled” and most notably “Rehabilitation Services Facility” (“RSF”). RSFs are defined as 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.”

Mary Ellen Cookingham, another one of my predecessors, classified Cornerstone’s predecessor, Rhinebeck Lodge for Successful Living, as an ACF under the Town Code by letter dated May 5, 1998. Ms. Cookingham also determined in that letter that the use of the Cornerstone Property as an ACF was a legal preexisting nonconforming use. That letter further provides that the use of the facility is to offer “rehabilitation services to alcohol and drug dependent persons”.

There is no indication that the use of the Cornerstone Property as an ACF has changed since the issuance of Ms. Cookingham’s letter. This office has on file certifications from the New York State Office of Alcoholism and Substance Abuse Services (“OASAS”) evidencing that Cornerstone is a duly licensed alcohol and drug rehabilitation facility. It appears that the Cornerstone Property has consistently treated a patient population that suffers from drug and alcohol dependency. Cornerstone has not changed the type of population (patients) treated i.e. ACF Clients on the Cornerstone Property since 1998. It is my determination that Cornerstone is and has been a RSF which serves this specific type of ACF Client.

The Cornerstone Property is located in Zoning District C (Conservation Agricultural Residential District). ACFs are prohibited uses in this Zoning District. The use of the Cornerstone Property as an ACF is a pre-existing nonconforming use in this Zoning District. Cornerstone’s status as a legal preexisting nonconforming use has been confirmed by my predecessors in letters dating back to 1998. It is my determination that Cornerstone’s capacity increase to 99 beds did not constitute an impermissible enlargement or extension of this nonconforming use.

Section 250-81 of the Town Code provides that lawful nonconforming uses in effect as of the effective date of Chapter 250 of the Town Code may be continued indefinitely provided such use shall not be enlarged, extended or placed on a different portion of the site. Section 250-81 (A) (2) states that *where no building* is involved, the nonconforming 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 (emphasis added). Here, a building is involved, so this subsection is inapplicable to the use of the Cornerstone Property. Section 250-81 (C) provides that a preexisting nonconforming use “shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals (“ZBA”), and then only to a use which, as determined by the ZBA, maintains, or reduces the nonconformity. Such change of nonconforming use approval by the ZBA shall be prior to any other approvals required by the Planning Board.” As stated above, it is my determination that the use of the Cornerstone Property has not changed. The evidence available to me indicates that Cornerstone continues to use its facility as an ACF, specifically an RSF, for the same population of ACF Clients just as it and its predecessors have for many years.

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Section 250-84 (B) of the Town Code provides:

A building which became a nonconforming building as a result of this Chapter shall be permitted to expand to an amount not exceeding 50% of the aggregate building area as it existed on the effective date of this chapter, except that no nonconforming building shall be permitted to violate any other provisions of this chapter relative to the district in which it is located (emphasis added).

In 2005, Robert Fennell, another one of my predecessors, addressed this Town Code provision in the context of population increases at the Cornerstone Property.¹ Mr. Fennell determined that Section 250-84 (B) of the Town Code applied to expansions of buildings rather than uses. I agree with my predecessor on this point. The Town Code's 50% expansion rule is applicable only to expansions of nonconforming buildings and not nonconforming uses such as Cornerstone's. There is no indication that a building on the Cornerstone Property has been altered or expanded. Therefore, the 50% rule encapsulated in Section 250-84(B) cannot be cited to permit an increase in the permissible patient population or capacity on the Cornerstone Property.

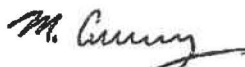
It is my determination that the increase in patient beds to its current capacity of 99 is not an expansion of the preexisting nonconforming use of the site as an ACF under Section 250-81 of the Town Code. Based on the material available to me, the use of the facility as an ACF has remained consistent. The increase in the volume or intensity of the use, i.e. the number of patients beds or ACF clients, does not in my opinion constitute an impermissible extension or enlargement of such use. My determination only applies to the increase in patient capacity at issue herein and does not apply to any potential future increases.

Conclusion

The determinations rendered herein are based upon the facts available to me to as of the date of this letter, my investigation of these facts and my interpretation of the Town Code. As directed by Mr. Fenton, Cornerstone has applied to the Planning Board for the approvals required by Section 250-31(B)(5) of the Town Code. Consistent with previous letters issued by the MCEI to Cornerstone, this office will take no action while that application is pending before the Planning Board. This office will continue to monitor Cornerstone's application and take appropriate action in conjunction therewith when a final determination is rendered.

Pursuant to Section 250-98 (M) of the Town Code, you may appeal this determination to the ZBA in accordance with the procedure stated in the Town Code.

Very truly yours,


Michael Cosenza,
Municipal Code Enforcement Inspector

¹ Letters of ZEO Fennell dated September 26, 2005, October 21, 2005 and October 24, 2005.