

EXHIBIT 9

**FINDINGS AND DECISION OF THE
TOWN OF CLINTON
ZONING BOARD OF APPEALS**

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Town Clerk
Town of Clinton

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In the Matter of Medical Arts Sanitarium, Inc. d/b/a

Cornerstone of Rhinebeck

Application Received April 29, 2022.

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FINDINGS OF FACT

1. By letter dated March 17, 2022, a group of property owners in the Town of Clinton (the “Town”) residing near Medical Arts Sanitarium Inc., d/b/a Cornerstone of Rhinebeck (“Cornerstone”) by their attorneys Van DeWater and Van DeWater (the “Neighbors”) submitted a complaint to the Town of Clinton Municipal Code Enforcement Inspector (the “MCEI”) regarding Cornerstone’s use of their property (the “MCEI Complaint”) located at 73-93 Serenity Hill Road (Tax Grid Id. No. 132400-6469-00-531763-0000) (the “Cornerstone Property”).
2. Cornerstone operates as a drug and alcohol rehabilitation facility on the Cornerstone Property. Zoning regulations, as codified in the Town of Clinton Town Code (the “Town Code”), do not permit drug and alcohol rehabilitation facilities in the Town’s Conservation Agricultural Residential District (the “C District”), where the Cornerstone Property is located.

3. Town Code Section 250-80(A) provides, in relevant part: “[t]he lawful use of any land, buildings or structures, or a part thereof existing at the time that this chapter or any subsequent amendment becomes effective, may be continued, although such use does not conform with the provisions of this chapter, except as provided in this article.” Cornerstone had been operating its facility prior to the Town’s adoption of its zoning and is therefore a preexisting nonconforming use as described in Town Code Section 250-80(A) and subject to the Town Code’s regulation of such uses.
4. The MCEI Complaint alleged that Cornerstone violated certain provisions of the Town Code by increasing their bed capacity and by expanding their services to provide medically supervised detoxification services to its patient population. The Neighbors asserted in the MCEI Complaint that Rhinebeck Lodge for Successful Living, Cornerstone’s predecessor, did not provide detoxification services to its patient population prior to the Town’s adoption of the zoning regulations, and that the addition of such services impermissibly changed and expanded the preexisting nonconforming use of the Cornerstone Property.
5. To support that assertion, the Neighbors argued that in 2017 Cornerstone applied for accreditation from the Commission on Accreditation of Rehabilitation Facilities (“CARF”) to provide detoxification services to its patient population and had held itself out as an “active part of the ‘alternative to incarceration’ drug court referral system.”
6. The Neighbors further asserted that Cornerstone’s bed capacity increase was an impermissible expansion of its use which has caused negative impacts on the community, including additional pressure on community resources such as ambulance and fire.

7. The MCEI responded to the MCEI Complaint by rendering a determination dated April 1, 2022 (the “MCEI Determination”). In the MCEI Determination, the MCEI found the following:

- Cornerstone is operating as a pre-existing nonconforming Alternate Care Facility (“ACF”), specifically a Rehabilitation Services Facility (“RSF”)¹.
- Cornerstone did not impermissibly change or expand its nonconforming use by offering detoxification services to its patient population because the type of patient, i.e. alcohol and drug dependent individuals, being treated did not change.
- Town Code Section 250-81(C) did not apply because Cornerstone’s use of the property did not change;
- Town Code Section 250-84, which applies to the expansion of nonconforming buildings, does not apply to preexisting uses and therefore cannot be cited to permit Cornerstone to expand its bed capacity.
- Cornerstone did not violate Town Code Section 250-81(A)(2) because that section only applies when there is no building is involved.
- Cornerstone’s bed capacity increase from 66 to 99 was not an impermissible expansion or enlargement of Cornerstone’s nonconforming use. Specifically, the MCEI held that “[t]he increase in 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.”

8. The MCEI also noted in the MCEI Determination that Cornerstone had been directed to apply to the Town of Clinton Planning Board (the “Planning Board”) for a special use permit and site plan approval in accordance with Town Code Section 250-31(B)(5) and that Cornerstone had submitted such application which was still pending. The MCEI Determination concluded with a paragraph advising the Neighbors that they “may appeal this determination to the ZBA in accordance with the procedure stated in the Town Code.”

¹ The Town Code describes such facilities as “Alternate Care Facilities”, and more specifically “Rehabilitation Services Facilities” (“RSF”). Town Code Section 250-105 defines RSFs as “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.”

9. The MCEI Determination was filed with the Town of Clinton Town Clerk (the “Town Clerk”) on April 6, 2022.

10. The MCEI in rendering the MCEI Determination relied in part on other determinations issued by his predecessors. These decisions included:

- A decision by Mary Ellen Cookingham (“Cookingham”) by letter dated May 4, 1998 determining that Rhinebeck Lodge for Successful Living was a preexisting non-conforming alternate care facility with a bed capacity of 68;
- A decision by Robert Fennell (“Fennell”) dated September 26, 2005 determining that the 50% expansion rule found in Town Code 250-84 that applies to non-conforming buildings does not permit an increase in Cornerstone’s bed capacity;
- A decision by John J. Fenton (“Fenton”) dated March 6, 2021 determining that Cornerstone is an ACF and is a pre-existing nonconforming use;
- A decision by Fenton dated August 31, 2021 determining that Cornerstone was in violation of Section 250-31 of the Town Code because they expanded their bed capacity without first submitting an application to the Planning Board for a special use permit and site plan approval;
- A decision by Fenton dated November 10, 2021 reaffirming the August 31 decision and determining that the Town Code as it applied to Cornerstone was not preempted by regulations promulgated by the New York State Office of Alcohol and Substance Abuse Services (“OASAS”). Fenton further advised Cornerstone to apply to the Planning Board pursuant to Town Code Section 250-31(B)(5).

11. On April 29, 2022, the Neighbors filed an application with the Town of Clinton Zoning Board of Appeals (the “ZBA”) for an appeal interpretation (the “Application”) which would reverse the MCEI Determination and find that Cornerstone impermissibly expanded and changed its nonconforming use is in violation of Town Code Sections 250-81(A) and 250-31(B)(5).

12. The Neighbors attached exhibits to the Application. The ZBA reviewed those exhibits, which included the following:

- Exhibit A: the April 1, 2022 MCEI Determination;
- Exhibit B: the March 17, 2022 MCEI Complaint;
- Exhibit C: Cookingham’s May 4, 1998 letter;
- Exhibit D: Certificate of Occupancy dated June 3, 1998;
- Exhibit E: Operating Certificates from OASAS;

- Exhibit F: Records of Bed Capacity Increase from 66 to 76 in 2002;
- Exhibit G: Fennell’s October 21, 2005 letter;
- Exhibit H: Letter from OASAS issuing Cornerstone an Operating Certificate;
- Exhibit I: Records from CARF International;
- Exhibit J: Planning Board Minutes dated August 1, 2017;
- Exhibit K: Fenton’s March 6, 2021 letter;
- Exhibit L: Warren Replansky’s letter to the Planning Board dated March 22, 2022;
- Exhibit M: Kyle Barnett’s letter to Shane Egan dated January 14, 2022; and
- Exhibit N: Cornerstone’s site plan.

13. The Neighbors assert in the Application that Cornerstone’s bed capacity expansion violation dates back to 1999 because they increased their bed capacity from 48 to 66. To support that assertion, the Neighbors contend that Cornerstone had decreased its bed capacity from 66 to 48 for the time period from September 1998 to December 1999, therefore limiting Cornerstone to 48 beds pursuant to Town Code Section 250-81(D).² The Neighbors also argue that Cornerstone’s addition of detoxification services rendered it a “Hospital” as defined under the Town Code.³

14. The Neighbors further assert in the Application that Cornerstone intends to expand its “Residence Hall” into an abandoned inground swimming pool, and use “Building B”, a building authorized for residential purposes, as a structure for “training and emergency” purposes, which is not authorized by the Certificate of Occupancy issued to Cornerstone in 1998 and would also impermissibly expand Cornerstone’s pre-existing nonconforming use.

² Town Code Section 250-81(D) provides that a nonconforming use “[s]hall 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.

³ “Hospital” as defined in the Town Code, is “[a]n 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* Town Code § 250-105.

15. The ZBA conducted a public hearing on May 26, 2022. While the ZBA closed the public hearing on that date, the ZBA allowed further submissions from the Neighbors and Cornerstone and all parties agreed that the ZBA's 62-day deadline to render a decision on the Application would commence on July 8, 2022. Notice of this May 26, 2022 public hearing was duly provided to neighboring property owners and was timely published in the Poughkeepsie Journal. The ZBA also held meetings on June 23, 2022, July 28, 2022 and August 31, 2022 in regard to the Application.

16. At the public hearing, the ZBA considered statements made by the following individuals in support of Cornerstone's position:

- Jody Cross, Attorney for Cornerstone;
- David Bochner, Cornerstone's Vice President of Operations;
- Michael Purnell, employee of Cornerstone;
- Kevin Sheffield, a former patient at Cornerstone;
- Edward Jenkins, Cornerstone's Senior Counsellor of Rehabilitation;
- Jennifer Schofield, Cornerstone's VP Clinical Director; and
- Sandra Oliveira, employee of Cornerstone.

17. The ZBA also considered statements made by the following individuals in support of the Neighbors' position:

- Kyle Barnett, Attorney for the Neighbors;
- Edward Wilson, who owns property nearby;
- Kim Baker, who owns property nearby;
- Randi Sackheim, who resides at 103 Deer Hill Road;
- Art DePasqua, who resides at 84 Deer Hill Road;
- Christian Fekete, who resides at 795 Fiddlers Bridge Road;
- Katarina Maxianova, who resides at 79 Deer Hill Road;
- Tim Dumbleton, who resides nearby; and
- David Dieter Schoellnberger, who resides at 107 Deer Hill Road.

18. The ZBA also considered a series of letter submissions. These letters included:

- Sarah Ivins and Stephen Rotundo's letter dated April 17, 2022;

- Cornerstone's letter dated May 20, 2022;
- The Neighbor's letter dated May 26, 2022;
- Eric Bunge's letter dated May 26, 2022;
- Cornerstone's letter dated June 3, 2022;
- The Neighbor's letter dated June 13, 2022;
- Cornerstone's letter dated June 22, 2022;
- The Neighbors' letter dated June 23, 2022; and
- The Neighbor's letter dated July 8, 2022.

19. Cornerstone asserts in its submissions to the ZBA that the Application is untimely because the Neighbors' time to appeal commenced from the date of Fenton's March 6, 2021 letter. Cornerstone contended that the April 1, 2022 MCEI Determination did not restart the Neighbors' time to submit the Application because it merely confirmed the conclusions of Fenton's March 6, 2021 letter. The Neighbors respond to that assertion by arguing that because Fenton's March 6, 2021 letter never addressed whether Cornerstone's addition of detoxification services was an impermissible expansion of its pre-existing non-conforming use and the MCEI Determination did, the Neighbors' appeal time started in April of 2022.

20. Cornerstone also asserts in its submissions that the bed capacity increase from 66 to 99 was not an impermissible expansion because it did not result in a variation or alteration of the Cornerstone Property's use as a RSF and that there was insufficient proof of outward impacts on the community or exacerbation of existing conditions to show that Cornerstone intensified its use in violation of Town Code Sections 250-80(B) and 250-81(A). To support the assertion that Cornerstone's bed capacity increase did not have outward impacts sufficient to render the expansion impermissible, Cornerstone argues that the Town Engineer did not find that any adverse environmental impacts would occur from the bed capacity increase application being approved and that the Dutchess County Department of Health and the

Department of Environmental Conservation approved Cornerstone's on-site sewer and water systems.

21. Cornerstone also responds to the Neighbors' contention that Cornerstone impermissibly changed and expanded its use by its addition of detoxification services provided to its patient population by asserting that detoxification is merely a methodology of treatment and that the type of patient Cornerstone was treating did not change since that Town's enactment of zoning regulations.

22. By submission dated May 26, 2022, the Neighbors reiterate their argument that Cornerstone impermissibly changed and expanded their use by adding detoxification services to their treatment offerings. In support of that argument, the Neighbors assert that detoxification patients are different than rehabilitation patients because detoxification patients tend to come from crisis situations and unstable living environments and are at Cornerstone for short-term care and medical intervention rather than long-term care which rehabilitation patients receive. The Neighbors further argue that because detoxification patients are at Cornerstone's facility for a shorter period of time, Cornerstone can increase the number of patients treated annually by as many as 2,400, thereby intensifying their use and placing additional burden on local infrastructure and emergency services. The Neighbors also contend that the addition of detoxification services meant that Cornerstone was providing medical services and was operating as a "Hospital" as such term is defined in the Town Code which is not permitted in the C District where the Cornerstone Property is located.

23. The Neighbors also reiterate in their May 26, 2022 letter that Cornerstone’s bed capacity increase was an impermissible intensification of their use as an ACF RSF. The Neighbors assert that because Section 250-80(B) provides that the intent of the zoning provisions of the Town Code is to limit nonconforming uses to their existing level of intensity, Cornerstone is prohibited from increasing its bed capacity beyond the capacity established at the time the Town enacted its zoning regulations. In support of that argument, the Neighbors cite Bob Fennell’s September 26, 2005 letter which stated “[b]y increasing the number of residents at the facility, Cornerstone . . . will be increasing the nonconforming use and such increase is not permitted in the zoning law.”

24. Cornerstone responds to the Neighbors’ May 26, 2022 letter in a letter dated June 3, 2022. In that letter, Cornerstone argues that the increase in bed capacity was merely an increase in the volume of business operations and was not an intensification of the use, and further contends that the Neighbors failed to show that there were any material impacts on the community caused by this increase in volume. Cornerstone further contends that community opposition and anecdotal evidence without a factual basis is insufficient to find that Cornerstone violated the Town Code. Cornerstone also argued that Town Code Section 250-80(B) did not prohibit any and all increases because it is a mere policy statement. Cornerstone also asserts that relevant case law does not provide that municipalities can enact wholesale prohibitions on increases in volume or intensity.

25. Cornerstone also contends in its June 3, 2022 letter that the detoxification services it provides are not medically managed but medically supervised. In that letter, Cornerstone cites to the OASAS licenses necessary to provide the different levels of detoxification services and asserts that because Cornerstone is not a general hospital under Article 28 of the

New York State Public Health Law, it cannot provide medically managed detoxification. Cornerstone further elaborates on the different levels of detoxification by asserting that Cornerstone does not have an emergency department, an on-site lab, x-rays, wound care, IVs, or EKGs which would ordinarily be available in a hospital setting.

26. The Neighbors respond to Cornerstone's June 3 letter with a letter dated June 13, 2022. The Neighbors attached several exhibits to that letter, some of which were not previously submitted to the ZBA, including *inter alia* letters from West Clinton Fire District Chief Brian Dingee, an affidavit signed by Katarina Maxianova ("Maxianova") and an affidavit signed by Erin Sax ("Sax"). In that letter, the Neighbors argue that an increase in volume is an increase in intensity, and that Cornerstone's bed capacity increase from 66 to 99, a 50% increase, was an intensification. The Neighbors then refer to several statements of individuals residing in the Town regarding outward impacts from Cornerstone's operation of its facility. The Neighbors also dispute Cornerstone's assertion that Section 250-80(B) of the Town Code did not restrict Cornerstone's ability to intensify its use as an ACF RSF and that Section 250-80(B) only contained a policy statement. The Neighbors argue that because Town Code Section 250-81 contains the language "except as disallowed by §250-80", Town Code Section 250-80 is not a mere policy statement but an enforceable restriction. The Neighbors further argue that detoxification is a short term medically supervised procedure and does not help patients improve their functioning and skills of daily living as described by the Town Code's definition of a RSF, rendering the addition of such services an impermissible expansion and change of Cornerstone's use in violation of Town Code Sections 250-80(B), 250-81(A) and (C).

27. Cornerstone submitted their letter dated June 22, 2022 to the ZBA responding to the Neighbors' June 13, 2022 letter. Cornerstone acknowledged this additional letter was beyond the deadline established by the ZBA at the conclusion of the May 26, 2022 public hearing and a sur-reply but contended that because new substantive issues were raised in the Neighbors' June 13, 2022 letter, Cornerstone should have the opportunity to respond to those issues. In the June 22, 2022 letter, Cornerstone asserts that the statements submitted with the Neighbors' June 13, 2022 letter came from individuals who had not lived in the Town prior to 2010, well after Cornerstone's bed capacity increase to 99 and therefore could not show that the increase from 66 to 99 had negative impacts on the community. Cornerstone further asserts that some statements should be stricken from the record on grounds that they constitute hearsay.

28. The Neighbors submitted an additional letter dated June 23, 2022 objecting to Cornerstone's post deadline sur-reply submission. In that letter, the Neighbors' requested an additional opportunity to respond to Cornerstone's sur-reply in the event that that sur-reply were to be part of the record. The ZBA then permitted the Neighbors to submit an additional letter replying to Cornerstone's sur-reply, which they did by letter dated July 8, 2022.

29. In their July 8, 2022 letter, the Neighbors respond to Cornerstone's assertion that Maxianova and Sax did not live in the Town before Cornerstone's bed capacity expansion by indicating that many Town residents who testified at the public hearing, such as Wendie Adelman, did live in the Town prior to that expansion. The Neighbors also argue that none of the testimony should be stricken on the grounds that it is hearsay because there is no prohibition on such submissions in ZBA proceedings. The Neighbors further assert that the Neighbors do not have to show that there was a "baseline condition" of the neighborhood

prior to Cornerstone's bed capacity expansion because adding more people to Cornerstone's facility would have some form of impact on the community, which Cornerstone admitted when questioned by the ZBA. The Neighbors then further argue that, even without a "baseline condition" being shown, there is no requirement that they show that there were outward impacts to show that Cornerstone intensified its use as an ACF RSF because the increase in bed capacity was in and of itself an intensification.

CONCLUSIONS OF LAW

30. The first issue the ZBA must determine is whether the Application is timely. Pursuant to Town Code Section 250-98(B)(3), the Neighbors were required to file their appeal to the ZBA within 30 days of the action appealed from. The action that the Neighbors appealed was the April 1, 2022 MCEI Determination which was filed with the Town Clerk on April 6, 2022. The Neighbors submitted their Application on April 29, 2022, which was within 30 days of the MCEI Determination being rendered. While the ZBA acknowledges that the April 1, 2022 MCEI Determination and the MCEI's March 6, 2021 letter address some of the same subject matter, the ZBA finds that this is insufficient to render the Application untimely as Cornerstone has contended.

31. The MCEI Determination contained the conclusion that Cornerstone did not violate the Town Code with its addition of detoxification services, an issue not addressed by Fenton in his March 6, 2021 letter. Further, Fenton's letter never addressed whether Cornerstone's bed capacity increase would violate either Town Code Sections 250-80 or 250-81, while the MCEI Determination addresses those issues. Fenton's March 6, 2021 letter also contained the conclusion that Cornerstone's proposed alterations to its buildings did not violate Town Code Section 250-84(B), while the MCEI Determination held that this Section was inapplicable.

As such, the MCEI Determination and Fenton's letter contained different analyses and conclusions. Overall, the MCEI Determination contains a thorough analysis of the relevant sections of the Town Code while Fenton's March 6, 2021 letter did not. The ZBA is unpersuaded by Cornerstone's assertion that Fenton's letters reviewed and interpreted all the relevant sections of the Town Code by implication. This situation is not akin to a renewal of a "substantially identical" certificate of occupancy, which was the case in *Palm Mgmt. Corp. v. Goldstein*, 8 N.Y.3d 337 (2007)⁴.

32. The ZBA also notes that it is unclear whether the Neighbors had notice of Fenton's March 6, 2021 letter such that they could have appealed it. The ZBA therefore determines that the Application is timely and shall address the remaining issues on the merits.

33. The ZBA also finds it necessary to address whether the Town Code is preempted by OASAS with regard to the Cornerstone Property. While OASAS does regulate facilities such as Cornerstone that offer drug and alcohol rehabilitation, the OASAS certificates issued to Cornerstone clearly state that local zoning regulations apply. The ZBA determines that the OASAS regulations do not preempt the Town Code with regards to its zoning regulations.

34. The ZBA must now determine whether the MCEI was correct in his determination that Cornerstone is operating as a pre-existing nonconforming use, and if so, to what extent. The ZBA upholds the MCEI Determination and finds that Cornerstone's use is a preexisting nonconforming ACF RSF.

35. The Neighbors have argued in the Application that because Cornerstone decreased their bed capacity from 66 to 48 from September 1998 to December 1999, its nonconforming use

⁴ Both the Neighbors and Cornerstone cite this case to support their respective position on the issue of whether the Application was timely. Cornerstone contends that the March 6, 2021 and April 1, 2022 letters repeat the same substance and does not restart the Neighbors' time to appeal, and the Neighbors contend that their time to appeal began in April 2022 because the letters address different issues.

is limited to 48 beds pursuant to Town Code 250-81(D). The MCEI did not address whether Cornerstone's nonconforming use is limited to 48 beds, the ZBA finds it necessary to address this issue. The ZBA interprets Section 250-81(D) to apply to nonconforming uses that have completely ceased for a period of at least one (1) year rather nonconforming uses that temporarily decreased the volume of their use.

36. Therefore, the ZBA finds that Cornerstone's nonconforming use is limited a bed capacity of 68 rather than 48. This 68-bed capacity is derived from the records before the ZBA, most notably Cookingham's May 4, 1998 letter, with regard to the capacity of Cornerstone's facility prior to the adoption of the zoning regulations. Notably, Cookingham's determination on that issue was never appealed to the ZBA by Cornerstone's predecessor.

37. The ZBA will next address whether the MCEI correctly determined that Cornerstone did not impermissibly enlarge or alter its use in violation of Town Code Section 250-81 by offering detoxification services to its patient population. Town Code Section 250-81 provides, in relevant part:

Any lawful nonconforming use of buildings or land in existence on the effective date of this chapter, except as disallowed by § 250-80, may be continued indefinitely if maintained in accordance with all other applicable codes, laws, regulations, and other requirements, but:

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:

(1) Any additional commercial accessory uses shall constitute such extension, and are prohibited.

(2) 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, than occupied on the effective date of this chapter.

B. Shall not be moved to another location where such use would be nonconforming.

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.

- 38.** The ZBA does not find that Cornerstone began operating as a “Hospital” pursuant to Town Code Section 250-105 by offering medical detoxification services to its patients. The Town Code defines “Hospital” as “[a]n 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.”
- 39.** The ZBA interprets the Town Code’s definition of “Hospital” as a facility that diagnoses and treats sick and injured persons generally rather than a specific type of patient. In contrast, the Town Code’s definition of RSF refers to facilities that treat specific types of patients i.e. alcohol and drug dependent persons, which is the type of patient that Cornerstone treats. There is no evidence before the ZBA that Cornerstone treats any ailments other than alcohol and drug dependency. Cornerstone’s addition of detoxification services did not change the type of patient it serves, nor has it rendered Cornerstone’s use to be outside the category of an RSF. Detoxification, although short-term, is treatment that is intended to and has the effect of improving a patient’s skills in their daily living, which is consistent with the Town Code’s definition of RSF. A patient cannot improve their skills in their daily living in the long-term if they have not been treated in the short-term. As such, the ZBA finds that Cornerstone did not impermissibly expand or change its use in violation of Town Code Section 250-81 by offering detoxification services to its patient population.

40. The ZBA now turns to the issue of whether the MCEI was correct in his conclusion that Cornerstone did not impermissibly enlarge or extend its pre-existing nonconforming use as an RSF when it expanded its bed capacity from 66 to 99.
41. The ZBA agrees with the MCEI Determination regarding the applicability of Town Code Section 250-84(B). The ZBA finds that this section only applies to the expansion of nonconforming buildings and cannot be a basis for permitting Cornerstone's bed capacity expansion, which is an expansion of a nonconforming use.
42. The ZBA disagrees with the conclusion reached in the MCEI Determination that Cornerstone's bed capacity increase did not violate the Town Code. Town Code Section 250-80(B) provides that the intent of the Town's zoning regulations is to limit nonconforming uses to their "existing level of intensity". Although that section expresses a general policy of limiting nonconforming uses, Town Code Section 250-81 specifically references it as an enforceable provision by providing that "[a]ny lawful nonconforming use of buildings or land . . . except as disallowed by § 250-80 may be continued indefinitely if maintained in accordance with all other applicable codes, laws, regulations, and other requirements" This reference in Town Code Section 250-81 renders Town Code Section 250-80, including subsection (B) enforceable.
43. While the ZBA acknowledges that it may be possible for the volume of a use to increase without necessarily intensifying that use, it does not however find that to be the case here. Cornerstone has increased the volume of its use by 50% by increasing their bed capacity from 66 to 99. The increase in the number of patients at Cornerstone's facility requires additional resources to treat that larger patient population. This includes fire and ambulance services as well as the use of infrastructure. The ZBA determines this

increased usage is an intensification which has placed additional burden on Town and community resources.

- 44.** The ZBA further notes that evidence and testimony provided at the public hearing and the written submissions show that Cornerstone's bed capacity increase did impact the neighborhood in which Cornerstone is located. This evidence includes statements from nearby property owners as to the increased pressure on community resources such as fire and emergency medical services. A population increase also means an increase in traffic on Town roads and an increase in the use of water and waste water facilities. This testimony combined with the logical inference that an increase in residents necessarily requires more resources to treat the that resident population supports the conclusion that Cornerstone intensified its nonconforming use when it expanded its capacity to 99 beds. The ZBA therefore finds that Cornerstone's increase in the volume of its use by expanding its bed capacity to 99, was in fact an intensification and an impermissible enlargement and extension of Cornerstone' preexisting nonconforming use in violation of Chapter 250 of the Town Code.
- 45.** Lastly, the ZBA finds it necessary to address the Neighbors' contention that Cornerstone has violated Town Code Section 250-31(B)(5) because it failed to obtain Planning Board approval before it increased its patient population to 99. The ZBA disagrees with the MCEI Determination on this point.
- 46.** Section 250-31(B)(5) of the Town Code does not apply to preexisting nonconforming ACFs. A preexisting nonconforming use cannot, as we interpret the Town Code, obtain a special use permit. Cornerstone, as a preexisting nonconforming use, is governed by the provisions of Article VI of Chapter 250 of the Town Code. Cornerstone is

prohibited from simply applying to the Planning Board to retroactively or prospectively increase its patient capacity because such an increase constitutes an impermissible intensification of Cornerstone's use under Town Code 250-80(B) and an impermissible enlargement under Town Code Section 250-81(A).


47. The ZBA finds the plain language of Town Code Section 250-31(B)(5) persuasive on this point, as that language refers to a "new" special use permit and a "reexamination" of an ACF's site plan. A nonconforming ACF such as Cornerstone has no special use permit nor an existing site plan. Therefore, this section cannot be a basis to permit an increase in Cornerstone's patient population.

DETERMINATION

48. The ZBA upholds the MCEI Determination to the extent that Cornerstone is operating as a pre-existing nonconforming ACF RSF and holds that this nonconforming use has a maximum bed capacity of 68 pursuant to Town Code Section 250-80(B).
49. The ZBA upholds the MCEI Determination to the extent that Cornerstone did not impermissibly intensify, enlarge, or change its use by offering detoxification services to its patient population pursuant to Town Code Sections 250-80(B), 250-81(A) and 250-81(C).
50. The ZBA upholds the MCEI Determination to the extent that Town Code Section 250-84(B) cannot be cited to permit an increase in Cornerstone's patient population.
51. The ZBA reverses the MCEI Determination regarding Cornerstone's bed capacity increase to 99. The ZBA determines that this increase violated Town Code Sections 250-80(B) and 250-81(A);

53. For the foregoing reasons, the Application is hereby granted in part and denied in part as described above.

**ZONING BOARD OF APPEALS
OF THE TOWN OF CLINTON**

By: 
Joseph Malcarne, Acting Chairman
Dated: August 31, 2022